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Vol. I
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE
STATE OF NEW YORK, AND ALFRED M. BARRETT,
CONSTITUTING THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK FOR THE FIRST DIS-
TRICT, APPELLANTS,

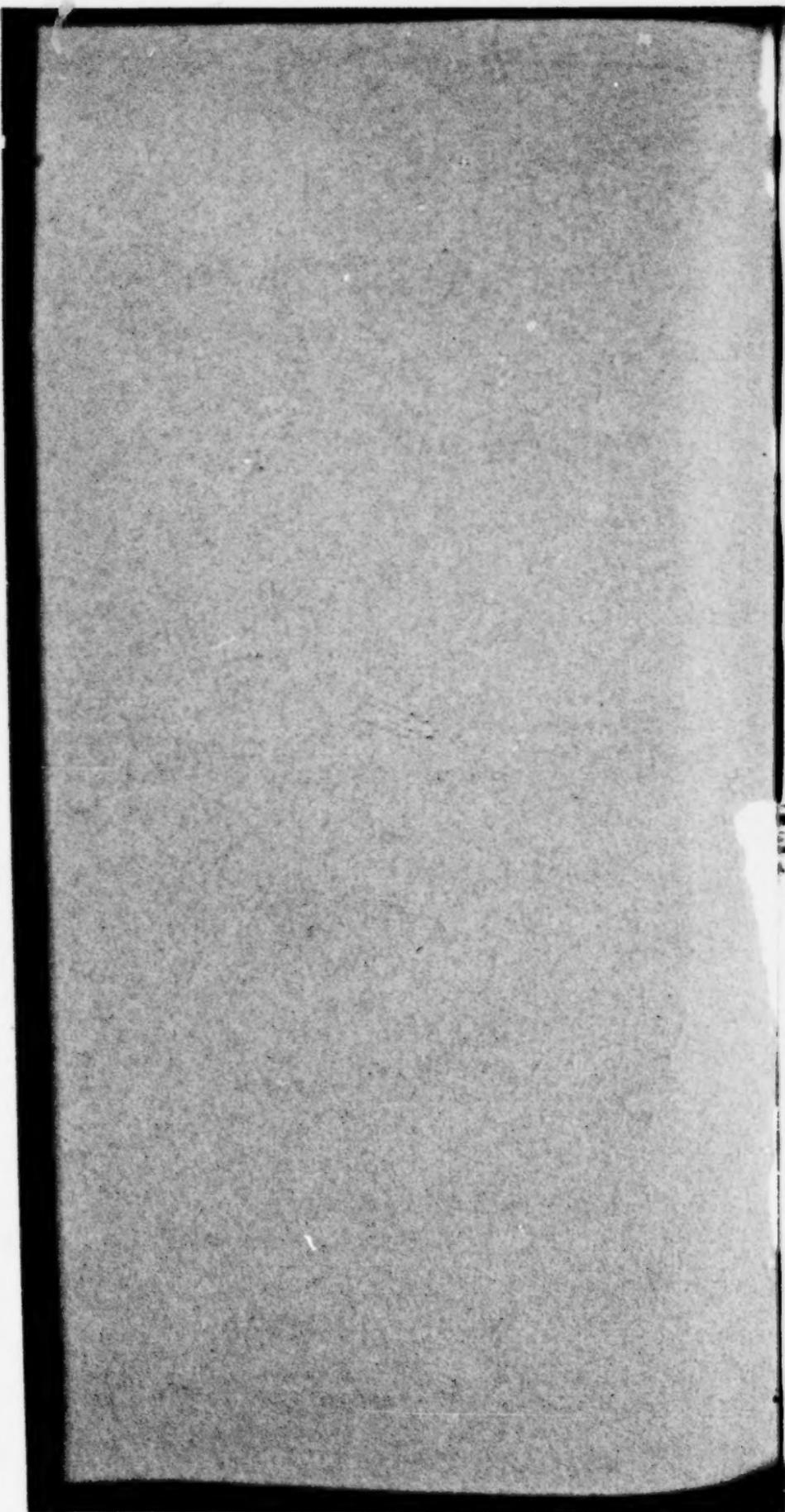
v.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 11, 1921.

(28,225)



(28,225)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, AND ALFRED M. BARRETT, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, APPELLANTS,

v.s.

NEW YORK & QUEENS GAS COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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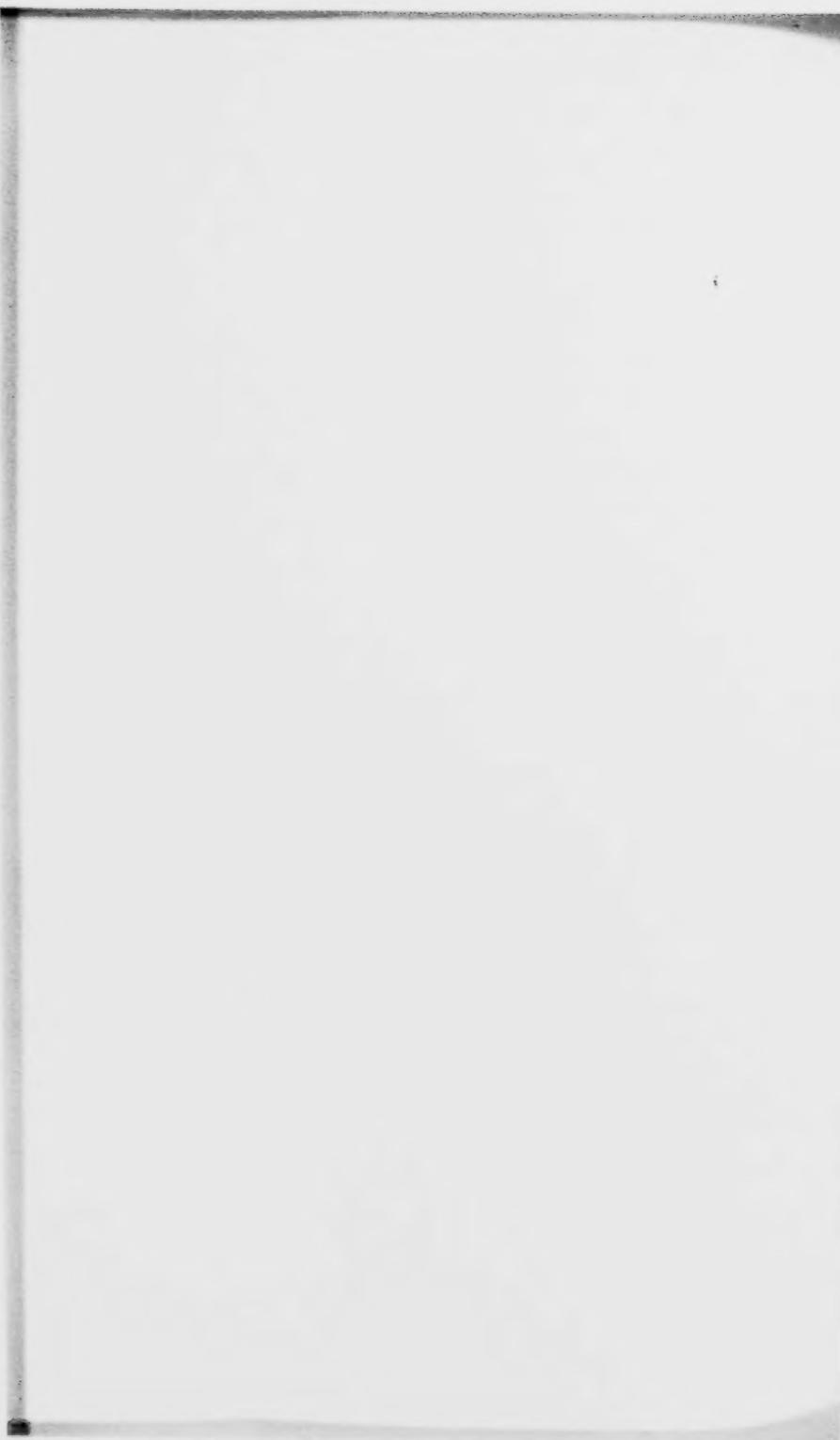
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1644.

District Court of the United States, Southern District of New York,

In Equity.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
againstCHARLES D. NEWTON, as Attorney General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Travis H. Whitney, Charles S. Hervey,
and Frederick J. H. Kracke, Constituting the Public Service Commission
of the State of New York for the First District, Defendants.*Bill of Complaint.*Shearman & Sterling, Solicitors for Complainant, 55 Wall Street,
New York.

John A. Garver, of Counsel.

2 District Court of the United States, Southern District of New York,

In Equity.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
againstCHARLES D. NEWTON, as Attorney General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Travis H. Whitney, Charles S. Hervey,
and Frederick J. H. Kracke, Constituting the Public Service Commission
of the State of New York for the First District, Defendants.*Bill of Complaint.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The New York and Queens Gas Company brings this its bill of complaint against Charles D. Newton, as Attorney General of the State of New York, Denis O'Leary, as District Attorney of the 3 County of Queens, in the State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kracke, constituting the Public Service Commission of the State of New York

for the First District; and thereupon your orator alleges, upon information and belief, and complains:

I. Your orator is a corporation duly incorporated on or about July 12, 1904, pursuant to the Transportation Corporations Law of the State of New York, for the purpose of manufacturing and supplying gas in the cities, villages and towns in the State of New York, and more particularly in the City of New York, within the Borough of Queens, County of Queens and State of New York.

II. The defendant Charles D. Newton resides in the Village of Geneseo, in the State of New York, and was duly elected and is now acting as the Attorney General of the said State, and has an office for the transaction of business at No. 51 Chambers Street, in the Borough of Manhattan, City of New York.

III. The defendant Denis O'Leary resides in the Borough of Queens, City of New York, in the State of New York, and was duly elected and is now acting as the District Attorney of the County of Queens in the said State.

IV. The defendants Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, constitute the Public Service Commission of the State of New York for the First District, within which is the said Borough of Queens of the City of New York, and are now acting as such Commissioners, having been duly appointed under and by virtue of the provisions of Chapter 48 of the Consolidated Laws of the State of New York, prescribing their powers and providing

for the regulation of certain public service corporations, including your orator. The defendants Travis H. Whitney,

Charles S. Hervey and Frederick J. H. Kracke, are citizens of the State of New York and reside in the City of New York, and have their principal office for the transaction of business as such Commission at No. 49 Lafayette Street, in the Borough of Manhattan, City of New York. Under the said Act, the said Commission is, among other things, empowered to fix the maximum price chargeable for gas in the City of New York, but, in so doing, they cannot fix a price in excess of that fixed by a valid statute.

V. On or about July 29, 1904, your orator acquired, and now owns, operates and maintains, a certain plant and gas works located in the former village of Flushing, in the Third Ward of the Borough of Queens, City of New York, together with a system of mains and service pipes for the distribution of gas from such plant and works to various portions of the said Ward; and it also duly acquired and now owns and exercises various franchises or municipal consents, authorizing it to lay, maintain and operate mains, pipes and conductors in the streets, highways and public places in the territory comprising the said Third Ward.

VI. Your orator is required by law, under penalty and forfeiture, to supply gas, upon application of the owner or occupant, to all buildings and premises within one hundred feet of any mains laid by it, and to furnish gas meters to its consumers without rent or

charge, and may be and has been required by the said Public Service Commission, under the said Chapter 48 of the Consolidated Laws of New York, to make reasonable extensions of its mains and plant to serve new and additional consumers of gas.

VII. By Chapter 125 of the Laws of 1906, of the State of New York, it is provided, among other things, that a corporation engaged in the business of manufacturing, furnishing or selling illuminating gas in the said Third Ward, shall not charge or receive, from and after 1910, for gas manufactured, furnished or sold by it to the public, a sum in excess of one dollar per thousand cubic feet; and the said Act further regulates the quality and pressure of gas and provides severe penalties for violations of any of the provisions thereof.

VIII. The capital stock of your orator consists of six thousand shares, of the par value of \$600,000; and your orator has outstanding five per cent First Mortgage Bonds, of the par value of \$816,000, payable on August 1, 1934. The said stock and some of the said bonds were duly issued in payment for the reasonable value of the plant and franchises purchased by your orator; and the remainder of the said bonds have been duly issued from time to time to obtain funds for the enlargement and extension of the plant and property of your orator.

Your orator has a present floating debt of at least \$265,000, representing money borrowed to meet the requirements of its business.

IX. Since its organization in 1904, your orator has managed its business prudently, but has paid no dividends to its stockholders; it has devoted to the prosecution, development and expansion of its business certain income which might have been used for dividends; and, in addition, it has, from time to time, borrowed large sums of money, as aforesaid, for the enlargement and extension of its manufacturing and distributing plant. On account of the inadequacy of its earnings, it has also been obliged, during the past year, to borrow money to pay interest on its bonded indebtedness.

X. The reasonable value of your orator's property devoted to its gas business as of December 31, 1918, including additions made during the year, was not less than \$1,492,976; and the cost of reproducing the said property during the year 1918 and at the present time would greatly exceed that amount. In addition thereto, your orator is possessed of going value and other intangible assets of great value; and there now exists an aggregate deficiency in your orator's earnings below seven and one-half per cent upon the value of the said property devoted to the gas business, in the sum of at least \$300,858.41, and including interest compounded at six per cent per annum, the sum of at least \$352,023.07; and the aggregate deficiency in your orator's said earnings below even six per cent upon the value of the said property devoted to the gas business, already amounts to at least \$141,713, and including interest compounded at six per cent per annum, \$157,765.95,

which said aggregate deficiency, with interest so compounded, should be added to the value of your orator's tangible property above stated as going value, upon which your orator is entitled to a return. The said Public Service Commission for the First District has, at various times since the year 1910, found and determined that a reasonable average return upon the value of the property used in the public service, by your orator and by other corporations engaged in supplying gas and electric service in the said Borough of Queens and under similar conditions elsewhere in the City of New York, was and is not less than seven and one-half per cent per annum, and a return of seven and one half per cent per annum upon the value of such property is a reasonable return and is the rate expected and usually realized, in the locality where such property is located, upon investments of a similar nature, with due regard to the risk attending them.

XI. In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of properties, to be observed by gas corporations; to examine

fully into the accuracy and completeness of such accounts and records and into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties, and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commission, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute. Your orator has conformed in all lawful respects to the said system of accounts as prescribed by the said Commission and has kept its books, capital accounts, operating statistics, and the like, in full compliance with the lawful directions of the said Commission, which has exercised continuous supervision over the accounts, operations, receipts, operating expenditures, finances, and affairs of your orator. In and by the said accounts of your orator, so kept in pursuance of the provisions of statute and the said Uniform System of Accounts and under such supervision of the said Commission, and in and by the duly verified reports of your orator, made according to law, the receipts and expenditures of your orator, and full information regarding the gas operations and business of your orator, have been and are from time to time furnished to the said Commission, as directed or desired by it, and have been and are under the continuous

scrutiny, audit and check of the said Commission and its authorized representatives; and the said Commission has from time to time reported to the Legislature the facts so disclosed and has informed the general public thereof, by and in the reports required of the said Commission by the said Chapter 48 of the Consolidated Laws of the State of New York.

XII. During the year ending December 31, 1918, the gross operating revenues from your orator's gas business, at the said statutory rate of one dollar per thousand cubic feet, amounted to \$344,676.09, and the cost of manufacturing and distributing said gas, together with taxes and other operating expenses, amounted to \$314,060.45, leaving a net income from the business operations of your orator of only \$30,615.64, which is less than two and one-quarter per cent on the minimum value of your orator's investment as hereinbefore set forth, and which would represent a return of seven and a half per cent upon a principal sum of only \$408,208, or a return of six per cent upon a principal sum of only \$510,260.

The present value of your orator's investment in property used in manufacturing and distributing gas within the said City of New York, exclusive of going value and of any intangible property, is, as above stated, not less than \$1,492,976. The principal sum upon which a return of seven and one-half per cent was earned during 1918, is, as above stated, not more than \$408,208, and the minimum value of the property upon which your orator is deprived of any return by the said Act of 1906, is not less than \$1,084,768, and is in fact a substantially greater quantum of property at the present time, while the maximum value thereof, based upon the present cost of reproduction of the said property, is an even greater amount.

A return of only six per cent upon the minimum value aforesaid of your orator's investment in its gas property would amount to not less than \$89,578 per annum, or 27.34 cents per thousand 9 cubic feet of gas sold. A return of seven and one-half per cent upon the minimum value aforesaid would amount to not less than \$111,973 per annum, or 34.18 cents per thousand cubic feet of gas sold. The said net earnings of \$30,615.64 for the year ending December 31, 1918, amounted to only 9.35 cents per thousand cubic feet of gas sold. The deficiency in your orator's earnings during the said year below six per cent on the minimum value of your orator's said investment amounted to \$58,962.36, or 17.99 cents per thousand cubic feet of gas sold; and the similar deficiency below seven and one-half per cent amounts to \$81,357.36, or 24.83 cents per thousand cubic feet of gas sold; and this deficiency is caused directly and solely by the arbitrarily restricted price at which your orator has been and is compelled by the said Chapter 125 of the Laws of 1906 of the State of New York, to supply gas to your orator's customers.

Your orator's average daily sales during the winter months amount to about 923,010 cubic feet, which, at 24.83 cents per thousand, establishes as your orator's present average daily loss since January 1, 1919, by reason of the said statutory rate, the sum of \$229.18 per

day, which loss your orator can by no possible means recover. This continuing daily loss is in addition to the deficiency of \$81,357.36 in your orator's earnings during the year ending December 31, 1918. There is no prospect of any material increase during the year 1919 in the net earnings on the value of your orator's property, over those of 1918.

XIII. The cost of manufacturing and distributing gas has greatly increased since the year 1918, by reason of the increase in the cost of coal, enriching oil and all other materials used in the manufacture and distribution of gas, the large advance in the wages of employees, and the substantial increase in taxes; and there is a certainty that there has thus far been, and will continue to be, a very substantial increase in such cost, during the year 1919.

10 XIV. During no year since its organization in 1904, have the earnings of your orator been sufficient to provide a return of as much as six per cent upon the reasonable value of its property devoted to the public use.

XV. The said Public Service Commission of the State of New York, for the First District, made an order on March 19, 1915, subsequently modified as to the time of performance by an order dated February 1, 1918, directing and requiring your orator to extend its mains and services from their present terminals to the distant and isolated community of Douglaston, including Douglas Manor. A compliance with the said order would require the installation of an entirely new system in an area not now served by your orator, involving the laying of six miles of transit mains to Douglaston, upon which there would be no customers, and thereafter six and one-half miles of distributing mains in the Douglaston community, all in order to reach about two hundred customers who are already supplied with electric current,—an average of sixteen customers per mile of main, which is less than one-fifth of the present average of customers upon mains of your orator. Compliance with the said order would require an estimated expenditure of from \$130,000 to \$250,000, the amount being dependent upon whether your orator may be required by the said Commission to instal a high or a low pressure system in the said Douglaston territory. The income from the gas to be sold to the prospective or potential customers in the said territory, even if the price of gas to them were increased from the present statutory maximum of one dollar to two dollars per thousand feet, would not be sufficient to pay the actual operating cost of supplying such customers with gas. Such income would therefore provide no return whatever upon the investment which your orator is directed to make in constructing such transmission and distributing mains. The return received by your orator upon the value of

11 the aggregate of its property presently devoted to the public use would therefore be still further reduced by compliance with the said order, and would thereafter amount to only one and three-tenths per cent or one and two-tenths per cent, according to whether a high pressure or a low pressure system were to be used to

supply gas through said extension. Your orator has accepted the said order of the said Commission, and intends to comply therewith as soon as practicable. By reason of the circumstances set forth in this paragraph and elsewhere in this bill, it has been and is and will continue to be altogether impossible for your orator to procure from any source the funds requisite for the construction of the said mains and extensions and furnish gas in the said Douglaston area, until your orator is enabled, by a decree of this Court, to charge an adequate rate for gas supplied by it to its customers. As soon as your orator is relieved from the disabling and oppressive effects of the said Act of 1906, and is permitted to charge an adequate rate, your orator will be enabled to secure from investors or through loans the necessary funds wherewith to make the expenditures requisite for the building of the said extension, and the said order of the Commission will be complied with by your orator.

XVI. By the Constitution of the United States, and particularly by the Fourteenth Amendment thereto, your orator is entitled to charge a price for its gas sufficient to cover the reasonable cost of conducting its business, including the amount required to renew and replace its plant and equipment, when necessary, so as to maintain your orator's investment therein unimpaired and to meet contingencies, accidents and losses, and also to provide a fair return upon the reasonable value of its property devoted to the public use. The maximum price of one dollar per thousand cubic feet for gas, fixed

12 by the said Act of 1906, has been, is and will continue to be wholly inadequate, in that it does not permit your orator to earn a reasonable return upon the fair value of its property devoted to the public use; and, in fixing the said maximum price, the said Act of 1906 has impaired, now impairs, and will continue to impair the obligation of your orator's contract with the State of New York, in violation of Section 10, Article I, of the Constitution of the United States, and has deprived, now deprives and will continue to deprive your orator of its property without due process of law, and has denied, now denies and will continue to deny it the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the said Constitution.

XVII. Your orator is advised by counsel and verily believes that the said Public Service Commission of the State of New York for the First District, has no power to permit your orator to increase the rate which it may charge for gas supplied in excess of the maximum rate of \$1.00 per thousand cubic feet prescribed by the said Act of 1906. If your orator should so attempt to increase its said rate, it would be unable to collect the same; for it is provided by the said Chapter 48 of the Consolidated Laws of the State of New York that the charging by any Gas Company of any rate in excess of that permitted by law, shall be a complete defense to any action by such company against any consumer for any unpaid bill. Furthermore, it would be the duty of the defendants herein, Charles D. Newton as Attorney-General of the State of New York, and Denis O'Leary as District Attorney of the County of Queens, State of New York, to

prosecute your orator for each such violation of law to endeavor to enforce and collect the enormous penalties prescribed by the said law; and it would be the duty of the defendants Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kraeke to cause suits
13 in mandamus or for injunction to be brought against your orator under Section 74 of said Chapter 48 of the Consolidated Laws of New York, for the purpose of preventing your orator from so increasing its rate.

XVIII. Your orator now has more than 10,000 customers in the said Ward to whom it is daily selling and distributing gas. The amount so sold and distributed during the year ending December 31, 1918, was 327,585,600 cubic feet. Many of said customers are financially irresponsible and are only temporarily residents of New York. Monthly bills for gas are rendered to its customers by your orator and unless such bills are promptly paid, the supply of gas to delinquent customers is discontinued by your orator, as authorized by law. If your orator should make a charge to any consumer, in excess of the statutory rate of one dollar per thousand cubic feet, your orator is informed and believes that such consumer would refuse to pay such charge, upon the pretext that the making of such charge is a complete defense to your orator's entire claim against such consumer. If your orator should thereupon discontinue service to such consumers and remove the meters, your orator is advised and believes that it would be at once subjected to a multiplicity of suits by such consumers, to compel the restoration of such meters and service, as well as to prosecutions for the fines and penalties prescribed by the said Act, which prescribes a penalty of \$1,000 for each separate charge to any consumer in excess of the said statutory rate of one dollar per thousand cubic feet. If your orator should make a charge in excess of said one dollar rate each month to each of its consumers, the aggregate of the penalties so incurred in one year would amount to over \$120,204,000, and the damage to your orator would be irreparable and absolutely destructive of all its assets, franchises and property; and a refusal or failure to observe and comply with said statute,
14 if only for the purpose of having the same tested in good faith in a court of law, would involve a risk of absolute ruin to your orator and the entire destruction and confiscation of its property, by reason of the enormous fines for which it would be the duty of the defendants Newton and O'Leary to institute suit, in accordance with the requirements of Section 1962 of the Code of Civil Procedure of the State of New York. Your orator is, therefore, without adequate remedy at law for the redress of the wrongs suffered by the enforcement of said confiscatory rate and the enforcement of the said Act of 1906; and such injury to your orator is irreparable except through the intervention of a court of equity.

XIX. Your orator is advised by counsel, and therefore avers and claims, that there is no remedy, except in equity, to test adequately the validity of the said Act, and that, in the absence of such remedy in equity, the penalties provided in the said Act would be unreasonable and confiscatory, and would deprive your orator of its

liberty of contract and of its property, without due process of law and without just compensation, and would likewise deny to it the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; on which account your orator invokes the jurisdiction of this Court, to protect it against the aforesaid threatened invasion by the defendants of its inherent rights under and guaranteed by the said Constitution.

XX. The reasonable value of your orator's property, which is impaired by the said statutory rate and by the threatened acts of the defendants aforesaid, and the amount involved in this suit, is largely in excess of \$3,000.

XXI. To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the defendants may each answer the premises, but not upon oath or affirmation,
15 the benefit whereof is hereby expressly waived by your orator, it now prays:

1. That it be adjudged and decreed that Chapter 125 of the laws of 1906, in so far as it provides that your orator shall not charge or receive for gas manufactured, furnished or sold in the said Third Ward of the Borough of Queens, a sum per one thousand cubic feet in excess of a rate of one dollar per thousand cubic feet, from and after the year 1910, is illegal and void, because in contravention of Section 10 of Article I of the Constitution of the United States, and of the Fourteenth Amendment to the said Constitution.

2. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result from the further enforcement of the said Act, and that such injury would be irreparable.

3. That it be adjudged and decreed that your orator be granted a writ of permanent injunction, issuing out of and under the seal of this Honorable Court against the defendants, restraining them and each of them and each of their officers, agents, servants and employees and any and every person acting under and by virtue of the authority of the said Act, from in any way enforcing or attempting to enforce the provisions of the said Act of 1906 against your orator, or from bringing any actions thereunder to enforce the said penalties against your orator, or from bringing any actions in mandamus or for an injunction in any court whatsoever, for the purpose of compelling compliance by your orator with the said Act.

4. Your orator further prays that your Honors grant unto your orator a writ of subpoena ad respondendum, issuing out of and under
16 the seal of this Honorable Court, to be directed to the said defendants, commanding them and each of them, on a certain day and under a certain penalty, to be therein inserted, to appear before your Honors in this Honorable Court, and then and there full, true, direct and perfect answer to make to all and singular the premises, and further to stand, do, perform and abide by such further order and decree as to your Honors may seem meet.

And your orator will ever pray, etc.

NEW YORK AND QUEENS GAS
COMPANY,

By ROBERT A. CARTER,

Treasurer.

SHEARMAN & STERLING,

Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, New York City.

JOHN A. GARVER,

Of Counsel.

UNITED STATES OF AMERICA,

Southern District of New York,

County of New York, ss:

Robert A. Carter, being duly sworn, says that he is the treasurer of the New York and Queens Gas Company, the complainant named in the foregoing bill of complaint, and who has subscribed to the same; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

ROBERT A. CARTER.

Sworn to before me, April 7, 1919.

[SEAL.]

H. L. McCORMICK,
Notary Public, Kings County No. 8.

Certificate filed in New York County No. 18.

Kings County Register's No. 110.

New York County Register's No. 10022.

Commission expires March 30, 1920.

17

Misc. 1289.

Equity Subpoena.

H.

The President of the United States of America to Charles D. Newton, as Attorney-General of the State of New York; Denis O'Leary, as District-Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, constituting the Public Service Commission of the State of New York for the First District, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by New York and Queens Gas Company, and to further do and receive what the said Court shall have considered in this behalf; and this

you are not to omit under the penalty on you and each of you of two hundred and fifty dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 7th day of April, in the year one thousand nine hundred and nineteen and of the Independence of the United States of America the one hundred and forty-third,

ALEX GILCHRIST, JR.,

Clerk.

SHEARMAN & STERLING,

Sol'rs.

The defendants are required to file their answers or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso,

ALEX GILCHRIST, JR.,

Clerk.

Submitted to Public Service Commission, First District, Apr. 17, 1919.

Referred to Counsel—see minutes.

Action taken:

[SEAL.]

FRANK N. ROBINSON,

Acting Secretary.

18 I hereby certify that on the 9th day of April, 1919, at the City of Brooklyn, in my district, I personally served the within subpoena in equity upon the within named Denis O. Leary, Long Island City, by exhibiting to Mr. Meyers, secretary to the within, the original, and at the same time leaving with him a copy thereof.

Dated April 9th, 1919.

(Signed)

J. M. POWERS,

U. S. Marshall, Eastern District of New York.

I hereby certify that on the 8th day of April, 1919, at the City of New York, in my District, I personally served the within subpoena in equity upon the within named defendants, Travis H. Whitney, Frederick J. H. Krache and Charles S. Hervey, constituting the Public Service Commission of the City of New York, first District, each of them, at 49 Lafayette Street, and at the same time leaving with them copies thereof.

Dated April 8th, 1919.

(Signed)

THOMAS McCARTHY,

U. S. Marshall, Southern District of New York.

UNITED STATES OF AMERICA,

Northern District of N. Y., ss:

I hereby certify and return that I served the annexed alias subpoena on the therein named Charles D. Newton, by handing to

and leaving a true and correct copy thereof with him at Albany, New York, in said District on the 14th day of April, 1919.

(Signed)

CLAYTON T. WHEELER,

United States Marshall,

By JOHN J. O'CONNOR,

Deputy.

19 District Court of the United States, Southern District of New York.

Equity 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York; and Lewis Nixon, constituting the Public Service Commission of the State of New York, for the First District, Defendants.

Amended Answer of Defendant Lewis Nixon Constituting the Public Service Commission for the First District.

The above named defendant, Lewis Nixon, constituting the Public Service Commission of the State of New York, First District, by Terence Farley, his solicitor, hereby answers the bill of complaint herein as follows:

I.

Answering the allegations of Paragraph VIII of said bill of complaint this defendant denies that the stock and some of the bonds referred to in said paragraph were duly issued in payment for the reasonable value of the plant and franchises purchased by the complainant. This defendant is without knowledge as to whether the remainder of said bonds have been duly issued from time to time to obtain funds for the enlargement and extension of the plant and property of the complainant. This defendant is without knowledge as to whether the complainant has at present a floating debt of at least \$265,000, representing money borrowed to meet the requirements of its business.

II.

Answering Paragraph IX of the said bill of complaint this defendant denies the allegations thereof except that this defendant admits that the complainant has paid no dividends to its stockholders and that this defendant admits that the complainant has from time to time borrowed large sums of money for the enlargement and extension of its manufacturing and distributing plant.

III.

Answering Paragraph X of the said bill of complaint this defendant denies the allegations contained in the said paragraph except that this defendant is without knowledge as to whether the cost of reproducing property of the complainant during 1918 and at the present time would greatly exceed the sum of \$1,492,976 and therefore this defendant denies the said allegation.

IV.

Answering Paragraph XI of the said bill of complaint this defendant denies the allegations thereof.

V.

Answering the allegations of Paragraph XII of the said bill of complaint this defendant is without knowledge as to whether during the year ending December 31, 1918 the gross operating revenues from the complainant's gas business at the statutory rate of \$1.00 per thousand cubic feet amounted to \$344,676.09 and as to whether the cost of manufacturing and distributing said gas together with taxes and other operating expenses amounted to \$314,060.45 and as to whether the net income from the business operations of the complainant was only \$30,615.64 and therefore this defendant denies said allegations. This defendant denies that the net income of \$30,615.64 is less than two and one-quarter per cent. of the value of the complainant's investment.

This defendant denies that the present value of the complainant's investment upon property used in manufacturing and distributing gas within the City of New York is as much as \$1,492,976, whether exclusive of alleged going value and of other intangible property or otherwise. This defendant denies that the principal sum upon which a return of seven and one-half per cent. was earned during the year 1918 was as little as \$408,208. This defendant denies each and all the other allegations contained in said Paragraph XII of said complaint.

This defendant further alleges that the gross operating revenues received by complainant in the year 1918 and its net income for said year are not fair or lawful criteria of the return heretofore earned and hereafter to be earned by complainant under Chapter 21 125 of the Laws of 1906 of the State of New York. This defendant further alleges that the costs entering into the manufacture and distribution of gas in the year 1918 were abnormally and temporarily high owing to the existence of a state of war between the United States and the Imperial German Government. Upon information and belief this defendant further alleges that heretofore and before the commencement of this suit complainant earned a reasonable and fair average return upon the fair value of its property employed in the public service, and will hereafter earn such fair return on said value under the said act of 1906.

This defendant further alleges that the hypothetical cost of reproducing complainant's property in the year 1918 during the existence of said state of war is not the fair value of the complainant's property and that to base rates for gas upon a valuation representing a hypothetical cost of reproduction in the year 1918 or during the said war period would be unlawful and manifestly unfair and unreasonable to the public and would result in allowing complainant to take advantage of a public calamity as a means of increasing its rates above what would be a fair return upon the fair value of its property employed in the public service.

VI.

Answering the allegations of Paragraph XIII this defendant is without knowledge as to the truth of the allegations herein contained and this defendant therefore denies the said allegations.

VII.

Answering the allegations of Paragraph XIV of the said bill of complaint this defendant denies the allegations of the said paragraph.

VIII.

Answering the allegations of Paragraph XV of the said bill of complaint this defendant is without knowledge as to said allegations (and therefore denies the same) except that he admits that on March 19, 1915 the Public Service Commission of the State of New York for the First District made an order subsequently modified as to the time of performance by an order dated February 1, 1918 directing and requiring the complainant herein to extend its mains and services so as to reasonably serve the territory known as Douglas-

22 ton, including Douglas Manor, and except that said defendant admits that the complainant has accepted the said orders of the said Commission and except that this defendant denies that said territory is distant and isolated. This defendant further answering Paragraph XV of the said bill of complaint alleges that after the said Commission adopted the said order of March 19, 1915 the complainant herein applied for a rehearing before the said Commission which rehearing was denied by order duly made on April 27, 1915. Thereafter, on March 30, 1915 a writ of certiorari was sued out of the Supreme Court of the State of New York in and for the County of New York upon the relation of the said New York and Queens Gas Company to review the proceedings of the said Commission including the said order of March 19, 1915. Thereafter such proceedings were duly had under the said writ of certiorari in the Appellate Division of the Supreme Court for the First Department, the Court of Appeals of the State of New York and the United States Supreme Court that on December 10, 1917 the said United States Supreme Court by its judgment duly affirmed the judgment of the said Court of Appeals of the State of New York and the judgment of the State

Supreme Court entered therein which theretofore had affirmed the determination and order of the said Commission. On February 1, 1918 judgment was duly entered in the Supreme Court of the State of New York making the said judgment of the United States Supreme Court the judgment of the said Supreme Court of the State of New York. This defendant further alleges that upon petition duly brought by the said Public Service Commission for the First District pursuant to Section 74 of the Public Service Commissions Law and after notice to complainant and a hearing, a peremptory writ of mandamus was duly issued on July 24, 1918 by the Supreme Court of the State of New York commanding the complainant herein to comply with the said orders of the Commission made on March 19, 1915 and February 1, 1918 and commanding said complainant to commence the construction of said proposed extension not later than August 1, 1918 and completing said construction as far as Aliey

Road or Main Street, Douglaston, by December 1, 1918 and
23 commanding complainant to complete the said extension and place the same in service not later than December 10, 1918.

By virtue of the foregoing proceedings this defendant alleges that the duty and obligation of the complainant herein to construct the said extension has become res adjudicata and the said duty and obligation is absolute and exists independently of this suit and independently of and irrespective of any decree which may be entered herein.

This defendant further alleges that the complainant herein has wholly failed to comply with the said orders of the said Commission as affirmed by the said United States Supreme Court and as directed and as commanded by the said peremptory writ of mandamus.

IX.

Answering the allegations of Paragraph XVI of the said bill of complaint this defendant denies the allegations of the said paragraph.

X.

Answering the allegations of Paragraph XVIII of the said bill of complaint this defendant is without knowledge of the allegations and therefore this defendant denies the same.

XI.

Answering Paragraph XIX of the said bill of complaint, this defendant denies that there is no remedy, except in a Court of Equity, to test the validity of the said Act, and that in the absence of such remedy in equity, complainant would be deprived of its property without due process of law, or denied the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

XII.

As a separate and further defense.

This defendant further alleges that said Chapter 125 of the Laws of 1906 provides that an illuminating gas to be furnished by complainant therein, shall have an illuminating power of not less than twenty-two sperm candles of six to a pound, burning at the rate of one hundred and twenty — spermaceti per hour, tested at a distance

of not less than one mile from the distributing holder, by a

24 burner consuming five cubic feet of gas per hour, and this defendant alleges, upon information and belief, that the complainant has persistently, continuously, knowingly and wilfully failed to abide by and comply with the foregoing provisions of said Chapter 125 of the Laws of 1906, in that it has persistently, continuously, knowingly and wilfully failed during the years 1918 to date and prior thereto, to furnish gas having an illuminating power of not less than twenty-two sperm candles of six to a pound burning at the rate of one hundred and twenty grains of spermaceti per hour tested as provided in the said act and has furnished gas through the years 1918 and 1919 and prior thereto, which, when tested as provided by said act had an average illuminating power much less than twenty-two sperm candles of six to a pound burning at the rate of one hundred and twenty grains of spermaceti.

As a result of said failure of complainant to comply with the statute, the consumers of said company received gas of a less heating and lighting value than they were entitled to receive under said act, and were obliged to and did pay more for gas necessarily consumed by them than they would have paid had complainant complied with said act of 1906 and the gas actually consumed was inferior to twenty-two candle power gas.

This defendant alleges upon information and belief that the failure of the complainant herein to furnish gas of the candle power as provided for by the said act of 1906 was occasioned by the fact that during the year 1918 the complainant voluntarily and without compulsion of law, pursuant to a contract made by it, extracted from the gas after its manufacture and before its distribution to the consumer much of the enriching oil contained therein, for the sole purpose of manufacturing a product known as toluol with the result that the gas when tested as provided by said statute had a candle power at much less than twenty-two. This defendant further alleges that despite this fact complainant during the said years 1918 and 1919 and prior thereto continued to exact and collect from consumers the rate of 80 cents per thousand cubic feet without giving to said consumers any credit or allowance whatever for the loss in candle power. That complainant has included in its operating expenses of the years 1918 and 1919 and prior thereto the cost of manufacturing twenty-

25 two candle power gas. This defendant alleges that said acts of complainant were illegal and in fraud and violation of the rights of consumers under said statute of 1906 and that because of said acts of complainant it does not come into this Court of Equity with clean hands and in no event is entitled to charge to

operating expenses the cost of manufacturing twenty-two candle power gas during the times in which it delivered to the consumer less than the statutory standard, or to any assistance to relief from this Court against the provisions of the act of 1906 (which complainant has violated) because of conditions, costs or return resulting from its operations during said years of 1918 and 1919 and prior thereto.

Wherefore this defendant prays that the bill of complaint herein be dismissed with costs.

TERENCE FARLEY,
Solicitor for Defendant Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, No. 49 Lafayette Street, Borough of Manhattan, New York City.

26 [Endorsed:] District Court of the United States, Southern District of New York. In Equity, 16-44. New York and Queens Gas Company, Complainant, against Charles D. Newton, as Attorney General, et al., Defendants. Amended answer of Lewis Nixon, constituting the Public Service Commission of the State of New York, First District. Terence Farley, Solicitor for Defendant Lewis Nixon, No. 49 Lafayette Street, Borough of Manhattan, New York City.

27

III. B.

District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
 against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey, and Frederick J. H. Kraeke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

The defendant Charles D. Newton, Attorney General of the State of New York, one of the defendants above named, answering the bill of complaint of the complainant, alleges as follows:

First. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "V" of the bill of complaint.

Second. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "VIII" of the bill of complaint.

Third. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "IX" of the bill of complaint.

Fourth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "X" of the bill of complaint.

Fifth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XI" of
28 the bill of complaint, except that part of said paragraph which alleges:

"In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of properties, to be observed by gas corporations; to examine fully into the accuracy and completeness of such accounts and records and into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commission, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute.

Sixth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XII" of the bill of complaint.

Seventh. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIII" of the bill of complaint.

Eighth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIV" of the bill of complaint.

Ninth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XV" of the bill of complaint.

29 Tenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVI" of the bill of complaint, except said defendant admits that complainant is entitled to enjoy a fair return upon its property invested in the public service.

Eleventh. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVII," except that part which alleges that it will be the duty of the Attorney General to prosecute the complainant if it should violate the provisions of Chapter 125 of the Laws of 1906.

Twelfth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XVIII" of the bill of complaint.

Thirteenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XIX" of the bill of complaint.

Fourteenth. Denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "XX" of the bill of complaint.

Fifteenth. Denies, upon information and belief, that complainant can only obtain relief in a court of equity.

Sixteenth. Upon information and belief, that the rate or rates provided for in Chapter 125 of the Laws of 1906, are reasonable and not confiscatory, and do not deprive complainant of its property without due process of law, and do not deny it the equal protection of the law, and that such statute is not in violation of the Fourteenth Amendment of the Constitution of the United States.

Seventeenth. Upon information and belief, that the rate fixed by said Chapter 125 of the Laws of 1906, gives complainant a fair and reasonable return on the capital stock invested by it in the gas business.

Eighteenth. Upon information and belief, that all and every of the matters in said complainant's bill of complaint are matters which may be tried and determined at law, and with respect to which complainant is not entitled to any relief in a court of equity.

Nineteenth. Upon information and belief, that the gross operating revenues received by complainant during the year 1918, and its income for that year, is not a fair criterion of a return heretofore earned and hereafter to be earned by complainant under said Chapter 125 of the Laws of 1906.

Twentieth. Upon information and belief, that the cost entering into the manufacture and distribution of gas for the year 1918 was abnormal, and temporarily high, owing to the existence of a state of war between the United States and the Imperial German Government.

Twenty-first. Upon information and belief, that the complainant, prior to the year 1918 earned a reasonable and fair average return upon the fair value of its property employed in the public service, and will hereafter earn such return on said value under said provisions of Chapter 125 of the Laws of 1906.

31 Wherefore, said defendant asks that the bill of complaint herein be dismissed, with costs.

Dated, Albany, April 29, 1919.

WILBER W. CHAMBERS,

Deputy Attorney General, Solicitor for said Defendant.

Charles D. Newton, Attorney General.

Office and P. O. Address: Capitol, Albany, N. Y.

CHARLES D. NEWTON,

Attorney General.

Office and P. O. Address: Capitol, Albany, N. Y.

32 [Endorsed:] District Court of the United States, Southern District of New York. New York and Queens Gas Co., Complainant, against Charles D. Newton, Denis O'Leary, et al., Defendants. Copy. Answer of Defendant Charles D. Newton, as Attorney General. Charles D. Newton, Attorney-General, Attorney for deft., Capitol, Albany, N. Y. Wilber W. Chambers, Deputy Attorney General, Solicitor for defendant, Charles D. Newton, as Atty. Gen. Office and P. O. Address: Capitol, Albany, N. Y.

33

IV.

III C.

District Court of the United States, Southern District of New York.

In Equity.

16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant.

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Travis H. Whitney, Charles S. Hervey and Frederick J. H. Kracke, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Answer of Defendant Denis O'Leary, as District Attorney of the County of Queens, State of New York.

The Separate Answer of the Defendant, Denis O'Leary, as District Attorney of the County of Queens, to the Bill of Complaint of the New York and Queens Gas Company, Complainant.

And now comes this defendant herein and saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfec-

tions in the said complainant's Bill of Complaint for answer thereto or to such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto he, this defendant, separately answering, says:

First.

This defendant does not know and is not informed save by said Bill of Complaint whether or not the complainant, New York and Queens Gas Company, is a corporation incorporated pursuant to the Transportation Corporation Laws of the State of New York for the purpose of manufacturing and supplying gas in the cities, villages, and towns in the State of New York and therefore leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Second.

Admits that this answering defendant resides in the Borough of Queens, City of New York and State of New York, and was duly elected and is now acting as the District Attorney in the County of Queens, in the said State.

Third.

Admits the several allegations contained in paragraphs numbered IV, V, VI and VII of the complainant's Bill of Complaint.

Fourth.

This defendant further and specially answering alleges that this defendant does not know and is not informed save by said Bill of Complaint whether or not the capital stock of the complainant consists of six thousand shares, of the par value of Six Hundred Thousand Dollars (\$600,000) with outstanding five per cent, mortgage bonds of the par value of Eight Hundred and Sixteen Thousand Dollars (\$816,000) payable on August 1st, 1934, and that the complainant has a present indebtedness of Two Hundred and Sixty-five Thousand Dollars (\$265,000), representing money borrowed to meet the requirements of its business, and therefore leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

35
Fifth.

And this defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph IX of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised or deem necessary and proper.

Sixth.

And this defendant further and specially answering paragraph X of the Bill of Complaint of the complainant denies the allegations contained in the said paragraph, except that this defendant does not know and is not informed save by said Bill of Complaint as to whether the cost of reproducing the property of the complainant during the year 1918 and at the present time would greatly exceed the sum of \$1,492,976.00, and leaves the complainant to make such proof in this regard as it may be advised or deem necessary and proper.

Seventh.

And this defendant further and specially answering herein denies any knowledge or information sufficient to form a belief as to the allegations set forth in paragraph XI of the Bill of Complaint, except that part of said paragraph which alleges:

"In and by the said Chapter 48 of the Consolidated Laws of the State of New York, the said Public Service Commission was and is empowered to prescribe uniform methods of keeping accounts, records, books and other data of financial operations and of properties, to be observed by gas corporations; to examine fully unto the accuracy and completeness of such accounts and records and

36 into the matters therein set forth and into the methods, practices, regulations and property employed by such gas corporations in the transaction of their business; to require annual reports of their financial operations, properties and the like, to be made under oath; to require the amendment or correction of any such report, if the same is found to be in any respect defective or erroneous; and, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. The said Commission, in the year 1908, prescribed a Uniform System of Accounts to be observed by gas corporations, including your orator, and from time to time, it has prescribed the form and detail of such annual reports; and it has ever since exercised fully, as to your orator, the powers of scrutiny and supervision conferred upon the said Commission by the said statute."

Eighth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Ninth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint,

as to the truth of the allegations contained in paragraph XIII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Tenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of
37 Complaint, as to the truth of the allegations contained in paragraph XIV of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

Eleventh.

Answering the allegations of paragraph XV of the said Bill of Complaint this defendant is without knowledge as to said allegations (and therefore denies the same) except that he admits that on March 19, 1915, the Public Service Commission of the State of New York for the First District made an order subsequently modified as to the time of performance by an order dated February 1, 1916, directing and requiring the complainant herein to extend its mains and services so as to reasonably serve the territory known as Douglaston, including Douglas Manor, and except that said defendant admits that the complainant has accepted the said orders of the said Commission and except that this defendant denies that said territory is distant and isolated. This defendant further answering paragraph XV in the complainant's Bill of Complaint avers that after the said Commission made its said order of date March 19, 1915, such proceedings were had in the Appellate Division of the Supreme Court for the First Department, the Court of Appeals of the State of New York and the United States Supreme Court that on December 10, 1917, the said United States Supreme Court, by its judgment duly affirmed the judgment of the Court of Appeals of the State of New York and the judgment of the Supreme Court of the State of New York entered therein which theretofore had affirmed the determination and
38 order of the said Commission. On February 1, 1918, judgment was duly entered in the Supreme Court of the State of New York making the said judgment of the United States Supreme Court the judgment of the said Supreme Court of the State of New York. This defendant further alleges that upon petition duly brought by the said Public Service Commission for the First District pursuant to Section 74 of the Public Service Commission Law and after notice to complainant and a hearing, a peremptory writ of mandamus was duly issued on July 24, 1918, by the Supreme Court of the State of New York commanding the complainant herein to comply with the said orders of the Commission made on March 19, 1915, and on February 1, 1918, and commanding said complainant to commence the construction of said proposed extension not later than August 1, 1918, and completing said construction so far as Alley Road or Main Street, Douglaston, by December 1, 1918, and com-

manding complainant to complete the said extension and place the same in service not later than December 10, 1918.

By virtue of the foregoing proceedings this defendant alleges that the duty and obligation of the complainant herein to *contract* the said extension has become res adjudicata and the said duty and obligation is absolute and exists independently of this suit and independently of and irrespective of any decree which may be entered herein.

This defendant further alleges that the complainant herein has wholly failed to comply with the said orders of the said Commission as affirmed by the said United States Supreme Court and as directed and as commanded by the said peremptory writ of mandamus.

39

Twelfth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVI of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper, except this defendant admits that complainant ought to receive a fair return upon the reasonable value of its property devoted to the public use.

Thirteenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper, except that portion which alleges that it will be the duty of the District Attorney of the County of Queens and State of New York to prosecute the complainant should it violate the various provisions of Chapter 125 of the Laws of 1906.

Fourteenth.

This defendant further and specially answering herein avers that he does not know and is not informed, save by said Bill of Complaint, as to the truth of the allegations contained in paragraph XVIII of said Bill of Complaint, and leaves the complainant to make such proof in this regard as it may be advised and deem necessary and proper.

40

Fifteenth.

This defendant further and specially answering paragraph XIX of the said Bill of Complaint denies that there is no remedy except in the Court of Equity to test the validity of the said Act.

Wherefore this answering defendant demands judgment dismissing the Bill of Complaint of the complainant with costs.

WILLIAM J. MORRIS, JR.,
Solicitor for Defendant Denis O'Leary.

County Court House, Long Island City, New York.

W. H. VAN STEENBERGH,
Of Counsel.

[Endorsed:] District Court of the United States, Southern District of New York. New York and Queens Gas Company against Newton, et al. Copy. Answer of Defendant O'Leary.

IV.

41 At a Stated Term of the District Court of the United States for the Southern District of New York, in the Second Circuit, Held at the Court House in the Post Office Building, in the Borough of Manhattan, City of New York, on May 29, 1919.

Present: Hon. Julius M. Mayer, District Judge.

In Equity.

16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Order Appointing Special Master.

Issue having been joined in this case upon the filing of the answers of the above-named defendants to the bill of complaint herein, and the complainant having moved upon the affidavit of John A. Garver, Esq., verified May 17, 1919, for the appointment of a Special Master herein, and it appearing that there is no objection thereto on the part of the defendant;

Now, on motion of Messrs. Shearman & Sterling, Solicitors for the Complainant, it is

Ordered:

1. That Abraham S. Gilbert, Esq., be, and he hereby is appointed Special Master, to take all of the testimony and evidence respecting the issues herein, make all needed computations and fully find the

facts; but nothing herein contained shall be construed as meaning that the Special Master's Findings of Fact shall be final, but only that he shall find the facts for the purpose of aiding the Court and making his recommendations. The said Master shall, before submitting to this Court his final report, prepare and serve on the solicitors for the respective parties hereto a draft of such report.

2. The said Master shall give due notice to all parties hereto and shall proceed promptly to the hearing of the testimony and evidence in this cause, and shall, so far as practicable, continue the hearing of the said cause from day to day; and, whenever deemed by him to be necessary for the prompt completion of such hearings, he shall hold two sessions in each day, until the completion of the taking of testimony and evidence.

The said Master shall report to this Court all the testimony and evidence received by him, together with his findings of fact and his recommendations as to the facts and the law, with diligence, it being the intent of this order that the report of the Master and exceptions thereto shall come on for hearing no later than the second Monday of October, 1919.

J. M. MAYER,
United States District Judge.

43 Take notice that the within is a copy of an order this day duly entered and filed in the office of the Clerk of the District Court of the United States, for the Southern District of New York.

New York, June —, 1919.

Yours, etc.,

SHEARMAN & STERLING,
Solicitors for Complainant,
55 Wall Street, New York City.

To:

Wilbur W. Chambers, Esq.,
Solicitor for Defendant, Charles D. Newton.
W. T. Morris, Esq.,
Solicitor for Defendant, Denis O'Leary.
Godfrey Goldmark, Esq.,
Solicitor for Defendant, Lewis Nixon.

[Endorsed:] District Court of the U. S., Southern District of New York. New York and Queens Gas Company, against Charles D. Newton, as Attorney General of the State of New York et al. Order with Notice of Entry. Shearman & Sterling, Solicitors for Complainant, 55 Wall Street, N. Y.

Copy received June 4, 1919.

*Counsel for Public Service Commission,
First District, State of New York.*

V.

44 District Court of the United States for the Southern District of New York.

In Equity.

No. 16-44.

NEW YORK & QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

On the annexed consent of the Solicitors for all parties, it is

Ordered that Alfred M. Barrett, now constituting the Public Service Commission of the State of New York, First District, be and he hereby is substituted as party defendant herein in place and stead of the defendant Lewis Nixon, constituting the Public Service Commission of the State of New York, First District, and that this suit be continued against said Alfred M. Barrett as such party defendant herein without prejudice to the proceedings already had herein.

JULIUS M. MAYER,

U. S. D. J.

Entrd. 11/24/20. E. J. S.

45 We hereby consent to the entry of the foregoing Order.
Dated, New York, November 13, 1920.

SHEARMAN & STERLING,
Solicitors for Complainant.

WILBER W. CHAMBERS,
Solicitor for Charles D. Newton, Attorney-General.

WILLIAM J. MORRIS, JR.,
Solicitor for Dennis O'Leary, District Attorney.

TERENCE FARLEY,
Solicitor for A. M. Barrett, Constituting the Public Service Commission of the State of New York, First District.

[Endorsed:] Misc. 1289. Index No. —. Year 19 —. District Court of the United States for the Southern District of New York. New York & Queens Gas Company, Complainant, against Charles D. Newton, as Attorney-General of the State of New York, et al., Defendants. Order of Substitution. Shearman & Sterling, Attorneys for Complainant, 55 Wall Street, New York.

VI.

47 District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Lewis Nixon, Constituting the Public
Service Commission of the State of New York for the First Dis-
trict, Defendants.

Report and Opinion of the Special Master.

A. S. Gilbert, special master.
Copy received Jul. 2, 1920.

*Counsel for Public Service Commission,
First District, State of New York.*

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53 United States District Court, Southern District of New York.

In Equity.

No. 1644.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens, State
of New York, and Lewis Nixon, Constituting the Public Service
Commission of the State of New York for the First District, Defendants.

Report of the Special Master.

To the Honorable Judges of the said Court:

I, the undersigned, Special Master appointed by Honorable Julius M. Mayer, District Judge, by order dated the 23rd day of May, 1919, "to take all of the testimony and evidence with respect to the issues herein, make all needed computations, and fully find the facts, and * * * report to this Court all the testimony and evidence received by him, together with the findings of fact and his recommendations as to the facts and the law," do hereby respectfully report: that, having been attended by counsel as below stated, I proceeded to take the proofs submitted by the several parties and to hear arguments thereon, the proofs so taken consisting of pages 1 to 2373 of printed testimony, which are herewith submitted and filed, together with a stipulation signed by the various solicitors of record waiving the signatures of the various witnesses to their several depositions, and further waiving the filing of the original exhibits marked in evidence.

There appeared before me as counsel the following:

For complainant: Messrs. William L. Ransom, Charles A. Vilas, and Jacob H. Goetz;

For defendant Newton: Messrs. Wilber W. Chambers, Charles J. Tobin, and C. R. Cummings;

For defendant O'Leary: Mr. William H. Van Steenbergh;

For defendant Public Service Commission: Mr. Ely Neumann, and Mr. Edward M. Deegan.

Upon the proofs as taken, I find and report as follows:

1. The complainant New York and Queens Gas Company was incorporated on or about July 12, 1904, under and in pursuance of the provisions of the Transportation Corporations Law of the State of New York, for the purpose of manufacturing and supplying gas for lighting the streets and public and private buildings in cities, 55 villages and towns in the State of New York, and particularly in the Borough of Queens, City of Greater New York.

2. Immediately prior to the organization of the complainant company, the Newtown and Flushing Gas Company had been furnishing gas to consumers in the Third Ward of the Borough of Queens, that company being the successor of a number of companies which had supplied gas in various portions of the Borough of Queens, and of which one of the manufacturing plants had been located at the same point, hereinafter more fully described, in the Village or Town of Flushing, since about the year 1856.

3. On the 12th day of July, 1904, and theretofore, the Newtown and Flushing Gas Company owned and used certain lands, buildings and other property, real and personal, for, and was actually engaged in, the manufacture, sale and distribution of gas in the Borough of Queens, City of New York. In addition to the property above described, the Newton and Flushing Gas Company owned, and was in the actual enjoyment of, franchises and rights, certain of them perpetual in character:

(1) To be a corporation and to exercise the privileges and rights of corporation action;

(2) To lay and maintain mains, pipes and conductors in and under the streets, highways, alleys, lanes and other public places in the Third Ward of the Borough of Queens (formerly the Town of Flushing, County of Queens), and also in the Second and Fourth Wards of the Borough of Queens (formerly the towns of Newtown and Jamaica, respectively, in the County of Queens), for the 6 purpose of supplying gas through the said mains to the inhabitants of the said portions of the Borough of Queens;

(3) Sundry other intangible rights.

The Newtown and Flushing Gas Company and its predecessors had also developed the gas business in the said Third Ward of the Bor-

ough of Queens, and had secured consumers sufficient in numbers and requirements to constitute a going and remunerative business.

4. On or about the 12th day of July, 1904, the New York and Queens Gas Company acquired all of the capital stock and all of the outstanding bonds of the Newtown and Flushing Gas Company, and, on or about July 18, 1904, by resolution adopted and filed in accordance with the requirements of the laws of the State of New York, the New York and Queens Gas Company merged the Newtown and Flushing Gas Company into itself. By virtue of the merger and of the statute pursuant to which it took place, the complainant New York and Queens Gas Company became possessed of and became the owner in fee simple of all of the real and personal property owned by the Newtown and Flushing Gas Company, the owner of the franchises and rights then owned, possessed or enjoyed by the Newtown and Flushing Gas Company, and the owner of the business established and developed by the Newtown and Flushing Gas Company and its predecessors.

5. The complainant New York and Queens Gas Company has, even since the date of the said merger, owned, possessed, used and enjoyed all of the said franchises and rights of the said Newtown and Flushing Gas Company, and still does own, possess, use and enjoy the said franchises and rights and each of them, together with 57 additional rights and franchises from time to time acquired by it; and the complainant company, by virtue of the said franchises and rights, has ever since the said merger maintained, and still does maintain, its mains and services in the streets, highways, alleys and public places of the City of New York, particularly in the Third Ward of the Borough of Queens, and has supplied and still does supply gas through the said mains and services to the inhabitants of the said Third Ward of the Borough of Queens.

6. The complainant New York and Queens Gas Company, since July 18, 1904, has owned and used, and still owns and uses, a plant for the manufacture and distribution of carbureted water-gas, located at the corner of Myrtle Avenue and Farrington Street, in the former Village of Flushing, in the Third Ward of the Borough of Queens. Additions to the said plant and property so acquired, improvements therein, and renewals and replacements of portions thereof, have been made from time to time since its acquisition in 1904, and various units or portions thereof have been from time to time withdrawn from service. As at present constituted, the plant consists of three Lowe type water-gas generator sets, one set being eight feet, six inches in diameter, and two set being each seven feet, six inches in diameter, which provide for the plant a working capacity not exceeding 2,250,000 cubic feet of gas per day. By the addition of high pressure blowing apparatus, this working capacity will be increased to not exceeding 2,750,000 cubic feet of gas per day. In connection therewith, the complainant owns and uses various other apparatus, equipment, appliances and appurtenances necessary for the manufacture and distribution of water-gas, including a gas stor-

58 age holder of 1,000,000 cubic feet capacity, a gas storage holder of 100,000 cubic feet capacity, and a relief holder of 250,000 cubic feet capacity, which, in emergency, can also be used alternatively as a gas storage holder. In the streets, highways, alleys and public places of the Third Ward of the Borough of Queens, the complainant company owns and uses 658,727 feet of mains of various sizes, and 7,998 services, through which it furnishes gas to approximately 11,000 consumers. The complainant also necessarily occupies, under lease, and uses in the conduct of its business, a shop building on Amity Street in Flushing, for the accommodation of the department engaged in the installation of meters and appliances and in other gas-fitting work, and a store-room and office building on Main Street, in Flushing, for the housing and accommodation of its general offices, its bookkeeping staff and commercial department, and a display-room wherein are exhibited and offered for rental or sale domestic and industrial appliances designed to increase the use of gas and make such use more economical, efficient and satisfactory to consumers.

7. In the year 1919, in compliance with the determination and order of the defendant Public Service Commission that consumers in an outlying portion of the Third Ward known as Douglaston and Douglas Manor, distant from Flushing about six miles, should be furnished with gas, the complainant New York and Queens Gas Company, up to May 1, 1920, laid and installed 31,330 lineal feet of four (4) inch transmission main and 9,928 feet of 16 inch main to enable the use of the high-pressure transmission system, together with 38,934 lineal feet of street mains, and also the services, governors, and other apparatus necessary in connection therewith, in order to supply gas to that territory, necessarily expending for this purpose, up to May 1, 1920, no less than \$145,735.71. Since on or about the

59 28th of November, 1919, the complainant has been furnishing gas to the inhabitants of said additional territory through the use of the said mains and a high-pressure distribution system, by means of which gas manufactured at its plant in Flushing is compressed and transmitted through the said four-inch main and distributed to consumers in Douglaston and Douglas Manor.

8. Since January 1, 1909, the books of account of the complainant company and of all other gas companies in the City of New York have been required to be kept in accordance with the rules and regulations of the defendant Public Service Commission of the State of New York for the First District, which Commission has had certain jurisdiction over said companies pursuant to the provisions of the Public Service Commissions Law of the State of New York, and I find that the books of the complainant company have been kept in conformity with the said rules and regulations and that they accurately set forth the facts therein undertaken to be shown.

9. By Chapter 125 of the Laws of 1906, which prescribed a maximum rate of eighty cents per thousand cubic feet of gas sold in the Borough of Manhattan and in certain portions of the Boroughs of

The Bronx and Brooklyn, the Legislature of the State prescribed, from and after the year 1910, a maximum rate of one dollar for certain outlying portions of the City of New York, including the territory served by this complainant, the pertinent provisions of the said statute being as follows:

"A corporation, association, co-partnership, or person engaged in the business of manufacturing, or furnishing or selling illuminating gas in the City of New York * * * shall not charge or receive for gas manufactured, furnished or sold in said City, a sum 60 per thousand cubic feet in excess of the following rate:

(2) In * * * the second, third and fourth wards in the Borough of Queens * * * \$1."

It was further provided in and by the said statute that:

"The illuminating gas furnished by any corporation, association, co-partnership or person, shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour, tested at a distance of not less than 1 mile from the distribution holder by a burner consuming 5 cubic feet of gas per hour, and each 100 cubic feet of gas shall not contain more than 5 grains of ammonia, nor more than 20 grains of sulphur, nor more than a trace of sulphureted hydrogen. The pressure of illuminating gas in any service mains in said city at any distance from the place of manufacture shall not be less than one inch nor more than two and one-half inches."

10. Under the construction which the courts of the State of New York have placed upon the provisions of Section 72 of the Public Service Commissions Law of the State of New York (People ex rel. Municipal Gas Company v. Public Service Commission, 224 N. Y. 156), the Public Service Commission of the State of New York for the First District, which otherwise would have plenary power over the rates of the complainant New York and Queens Gas Company, has been given no power or jurisdiction to fix, or to authorize the complainant to charge, a rate in excess of the one dollar rate fixed by Chapter 125 of the Laws of 1906, the said Section 72 of the Public Service Commissions Law providing that the Commission may not fix or authorize a rate for gas in excess of such rate as may have been fixed by statute.

61 11. In the manufacture of water-gas of the statutory standard of 22 candle-power, under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and the complainant did, in fact, use on the average 4.19 gallons per thousand cubic feet of gas made, during the year 1919.

12. The reasonable and necessary average cost of gas oil to the New York and Queens Gas Company during the year 1919 was 6.7 cents per gallon, and the price during 1920 has been slightly higher, aver-

aging 7.283 cents per gallon during the period covered by the proofs before me. The present price at which contracts may be made for the delivery of gas oil, alongside the plant of the New York and Queens Gas Company is substantially in excess of 7.3 cents per gallon (including lighterage cost), and is, in fact, in excess of ten cents per gallon. The trend of oil prices during 1919 and 1920 has been, and has remained, sharply upward, and the evidence adduced before me affords no reason to believe that upon the expiration of the contract under which the complainant is receiving its gas oil during 1920, it will be possible to secure a new contract or a supply of gas oil at a price less than ten cents per gallon.

13. In the manufacture of water-gas under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 37 pounds of anthracite coal of the grade of coal being supplied in recent years, or its fuel equivalent, of which approximately 34 pounds are used in the generators, and approximately three pounds are used under the

boilers. In addition, there is also required to be used under
62 the boilers approximately nineteen pounds of bituminous boiler coal or its equivalent in water-gas tar (one gallon of such tar weighing nine pounds and one pound of tar having a fuel value of about 1.7 pounds of the grade of boiler fuel now and recently supplied). The plant and operating conditions of the complainant company require the use of slightly more boiler fuel per thousand cubic feet of gas made than would be required if it were not under the necessity of compressing a portion of the gas sent out in order to reach the distant community of Douglaston and Douglas Manor, hereinbefore referred to.

14. The average cost of the anthracite generator coal used by the complainant during the year 1919 was \$8.28 per gross ton, plus \$1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins of the complainant, making in all \$9.36 per gross ton; and at the present time the price of such coal is at least \$10.25 per gross ton, plus \$1.25 for such cartage and handling, making in all at least \$11.50 per gross ton.

15. The average cost of the boiler coal used by the complainant during the year 1919 was \$6.472 per gross ton plus \$1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins at the plant of the complainant company, making \$7.552 in all; and at the present time the price of such coal is at least \$10.2479 plus \$1.25 for cartage and handling, making at least \$11.4979 in all, the exact extent of the increase which has taken place in 1920 not appearing in the record.

16. In addition to the cost of fuel, there is involved in water-gas manufacture the cost of labor handling of fuel used in the generators and under the boilers. In 1918, the cost of labor handling
63 fuel at the complainant's plant, under the rates of pay then in force, amounted to 2.08 cents, and in 1919 to 2.45 cents, per thousand cubic feet of gas made. As of the present time, under

average operations and the rates of pay now in force, the testimony before me showed the cost of labor handling fuel to amount to at least 3.13 cents per thousand cubic feet of gas made.

17. In the manufacture of water-gas, there is also required the use of iron mass, city water and incidental minor materials and supplies. In the year 1918, this item, in the complainant's plant, amounted to 0.83 cents, and in 1919 to 1.34 cents per thousand cubic feet of gas made. As of the present time, under average operations, the testimony before me showed this item to amount to at least the sum as shown for the year 1919.

18. In the manufacture of water-gas, under the conditions obtaining in a plant such as that of the complainant, there is realized as a residual credit, under average operations, about 0.7 gallons of water-gas tar per thousand cubic feet of gas made, such water-gas tar as of December 31, 1919, having a market or sale value of approximately 4.25 cents per gallon. During the year 1919, practically all of the water-gas tar so realized by the complainant was used by it as fuel under its boilers, being charged to the cost of boiler fuel at the rate of 6 cents per gallon, and being credited at the same figure to the production cost of gas in the complainant's plant during 1919. During the year 1919, the amount of water-gas tar realized as a residual credit, in the manufacture of water-gas in the complainant's plant was 0.7 gallons, and in 1918 0.5 gallons per thousand cubic feet of gas made.

64 19. The evidence adduced in this record affords no ground for expecting that the prices of materials or the wages paid for labor will be reduced during 1920 or 1921, or at any time which can now be forecast.

20. There is necessary, in the manufacture of water-gas, the employment of gas-making labor, the employment of repair labor, the use of repair material, and the incurring of miscellaneous works expense. In 1918, under the prices and the rates of pay then in force, the cost of gas-making labor, in the complainant's plant, was 4.67 cents; of repair labor, 1.7 cents; of repair material 1.82 cents; and of miscellaneous works expense 0.37 cents per thousand cubic feet of gas made. In 1919, under the prices and the rates of pay then in force, the cost of gas-making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, of miscellaneous works expense 0.39 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay and prices of materials now in force, the testimony before me, showed these items, under average operations, to cost at least the sums shown, respectively, for the year 1919.

21. During the year 1918, under the prices of materials and labor at that time in force, the reasonable and actual cost of water-gas manufacture in the complainant's plant was 55.38 cents per thousand cubic feet of gas made. During 1919, it was 63.45 cents per thousand cubic feet of gas made. Under the present prices paid for generator

and boiler coal and for gas oil, the cost of water-gas manufacture substantially exceeds the sum above stated for 1919, and is at least 74.55 cents per thousand cubic feet of gas made.

65 22. During the year 1919, the complainant sold to its consumers 336,241,400 cubic feet of gas, an increase of 2.6 per cent, over 1918. During the past five years the gas sales of the complainant to its consumers have increased, on the average, approximately seven per cent, per annum. During the year 1920, it is my judgment that, by reason of extension of mains into outlying portions of the territory the sales of the complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15 per cent.

23. In the manufacture and sale of gas, a percentage of the gas made is lost, due to condensation, difference in temperature at the consumer's meters, slow meters, leaks and the like. The relative amount of gas lost through these causes tends to be greater in a suburban area where the mains are smaller, the length of mains greater in relation to consumption, and where meters are commonly located in cellars of private houses. The use of high-pressure transmission also tends to increase the quantity of gas lost through condensation. I find that this so-called unaccounted-for gas, in the instance of the complainant company, reasonably represents approximately eleven per cent (11.03 per cent) of the gas made, and that in calculating the requirements of the complainant, that percentage should be used as a basis for computation.

24. The consumption of gas and its sale varies from time to time, depending, in large part, upon the weather and consequent factors. The low mark of gas sales is found in the warm summer months, when many consumers are absent from their homes, and the temperature eliminates the use of gas for heating, and lessens its use for cooking and lighting. The "peak" or maximum demand is

66 found in the winter months. The complainant company must, therefore, be prepared not alone to make sufficient gas to meet a total annual demand, but must be prepared to meet a maximum day's demand. The maximum day's send-out of the plant of the complainant company during the winter of 1919 to 1920 was 1,698,000 cubic feet of gas. The increased use of gas as a substitute for coal for heating and other domestic uses has a tendency to accentuate the maximum day's demand in relation to the annual output and thus requires a relatively larger plant capacity in relation to the average daily requirements. I find that the complainant's plant ought reasonably to have a reserve manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day), as accidents or the need for repairs may at any time take this unit out of use.

25. During the year 1918, the cost of water-gas manufacture in the complainant's plant was 60.65 cents per thousand cubic feet of gas sold. During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold. As of the present

time, under the cost of manufacture shown in Finding No. 21 hereinbefore, this cost is at least 84.27 cents per thousand cubic feet of gas sold.

26. I find that the reasonable and necessary amount of taxes paid by the complainant company during the year 1919 upon property used by it in the production and distribution of gas was 7.07 cents per thousand cubic feet of gas sold. During 1918 the taxes amounted to 7.39 cents per thousand cubic feet of gas sold.

27. There must also be added to the cost of making and distributing gas, the cost of renewals and replacements of property,
67 which I find to be the sum of three cents per thousand cubic feet of gas sold.

28. In addition to the item hereinbefore referred to, there must be included, in determining the cost of gas as delivered to the consumer, various items entering into the cost of distribution, including distribution superintendence and supplies and expenses, meter and installation work, transmission pumping, work on consumer's premises, repairs of meters, repairs of tools, repair of gas appliances, commercial expenses, salaries at the general office, supplies and expenses at the general office, legal expenses, claims and arrears expense, insurance, stable expense, automobile expense, claims for damages, real estate rents paid for property leased, stationery and printing, undistributed adjustments, uncollectible bills, interest on consumers' deposits, and relief department and pensions, and I further find that the actual and reasonable cost to the complainant company of these items during the year 1919 was not less than 27 cents per thousand cubic feet of gas sold. During 1918, the actual and reasonable cost to the complainant company of these items, including an item of 0.32 cents for defensive emergency service necessary in that year but not necessary in as great an amount in 1920 or future years, was not less than 23.97 cents per thousand cubic feet of gas sold.

29. The complainant derives an income from the rental of appliances, from its profit on the sale of appliances, from interest on bank balances and on consumers' final bills, and the like, which is classified as miscellaneous operating revenue. In 1918, the miscellaneous operating revenues represented 5.72 cents per thousand cubic feet of
gas sold. In 1919 the miscellaneous operating revenue repre-
68 sented 6.75 cents per thousand cubic feet of gas sold. I find
that 6.75 cents per thousand cubic feet should be credited
against the cost of making and distributing gas, on account of mis-
cellaneous operating revenue.

30. I find the total reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1919 was at least \$1,0880 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, \$1,0205 per thousand cubic feet.

31. I find the average selling price of gas to the complainant, in 1919, including that sold to the City of New York at 75 cents per thousand cubic feet, by reason of a statutory limitation on the rate chargeable for such gas, to be 99.51 cents per thousand cubic feet in 1919, leaving a net deficit to the complainant company from its gas operations in 1919 of 2.54 cents per thousand cubic feet, irrespective of any returns upon any of the property used in its gas operations. As of the present time, such net deficit is substantially in excess of that sum.

32. The plant, machinery and equipment used in the gas business of the complainant company have been and are maintained in excellent operating condition; proper repairs, renewals and replacements have been made as and when needed, and the same are now in as high a state of efficiency as if new.

33. I find that the complainant company was, on January 1, 1920, and now is, entitled to include in the amount upon which it
69 was and is entitled to a fair return, the sum of \$135,000 for working capital.

34. The tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, I find to have actually cost, prior to August 1, 1904, and to have been reasonably worth at the time of such acquisition by the complainant, at least the sum of \$670,488.86, exclusive of working capital. There has since been erected, installed or acquired by the complainant and added to its property, and there was in use in its gas business on January 1, 1920, certain additional and, plant, apparatus, mains and other property, of which the actual cost to the complainant company, less withdrawals since August 1, 1904, and exclusive of working capital, was and is no less than \$850,389.08, making the total cost of such property owned and used by the complainant company, as of January 1, 1920, and the present time, at least the sum of \$1,520,877.94. Adding to this the sum of \$135,000 which I deem a reasonable allowance for necessary working capital, produces an aggregate of \$1,665,877.94 as the sum representing the complainant company's total investment in the property used and useful in its gas business on January 1, 1920, its present investment being slightly in excess of that figure. In my opinion, the fair value of the property used and needed in the manufacture and distribution of the gas sold by the complainant company, as of January 1, 1920, and the present time, was and is at least the sum of \$1,655,877.94, and the complainant company as and is constitutionally entitled to have its rate such as to yield fair return upon at least that sum. For reasons set forth in my opinion herewith submitted, I have made no deduction from the above-stated amount on account of so-called "accrued depreciation," theoretical or otherwise.

35. I find that \$5.00 per thousand cubic feet of gas sold fairly presents the actual and necessary investment in property used and

needed for the manufacture, transmission and distribution of gas under the conditions such as those under which the complainant company carries on its gas operations, and such investment may, for the purposes of this case, be taken to be at least that sum.

36. Upon the trial before me, no claim was made by any of the defendants that any of the property owned or used by the complainant company was not and is not used in useful in its gas business.

37. Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flushing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of \$600,000 and its first mortgage bonds of the par value of \$650,000, making in all \$1,250,000.

38. The actual cost, when acquired, of the property now used by the complainant company but acquired by some predecessor company in earlier years, cannot be ascertained.

39. I find that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1, 1920, was and is at least \$45,153.90.

40. I find that, exclusive of the working capital and the undistributable structural costs hereinafter referred to, the cost to
 71 reproduce the plant, distributing system and other tangible property of the complainant company as of January 1, 1920, or as of the present time, was and is, without any deduction for depreciation, at least the sum of \$2,100,774.90, made up as follows:

(a) Building and apparatus.....	\$505,960.00
(b) Street Mains	1,071,139.00
(c) Services	175,563.00
(d) Meters	174,163.00
(e) Gas Appliances	85,427.00
(f) Arc Lamps	3,173.00
(g) Tools and Implements.....	1,002.00
(h) Laboratory Equipment	2,449.00
(i) Office Furniture and Fixtures.....	6,023.00
(j) Stable equipment.....	5,424.00
(k) Omissions and Contingencies.....	25,298.00
(l) Land	45,153.90

In the foregoing, I have not included any allowance for organization and development expenses prior to construction; the cost of financing; interest during construction; taxes on land during construction; engineering, superintendence and general contractor's expense and profit; administrative, legal and miscellaneous expenses during construction; or for so-called "going value." Unquestionably, in the reproduction of a plant distributing system and gas enterprise of this character, as of the present time, items of expense would necessarily be incurred along the lines indicated by these

items, all except "going value" being comprised within the category of what is commonly called "undistributable structural costs." Under the circumstances of my determination of this case, however, I have not felt called upon to determine and allow definite amounts to recover these additional elements of reproduction cost and expense.

72 41. With respect to the tangible property owned and used by the complainant as of January 1, 1920, and included in the above finding as to the cost to reproduce the said property, the complainant submitted to the defendants, in advance of the trial before me, a detailed inventory of items, units, and quantities, with brief descriptions of such property and a statement of the unit prices or costs applied to each such unit, to reach the above-stated cost to reproduce the property. Such inventory was checked up by the engineers of the defendants, at least to the extent desired by them, and upon the trial no testimony was given challenging any item or quantity shown in such inventory or any unit price applied therein.

42. Using the unit prices of labor and materials prevailing as of January 1, 1914, the cost to reproduce the tangible property of the complainant company itemized in Finding No. 40 hereinbefore, would be about one-half of the above-stated cost to reproduce the same as of January 1, 1920, to which, of course, in order to reach and state a figure reflecting all elements of reproduction cost, there would have to be computed, on a similar basis, and added, amounts covering the other items referred to in Finding No. 40.

43. During the twelve months ended December 31, 1918, the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, and during all and each of the periods so indicated, the operating revenues of the complainant company were not sufficient to pay the reasonable and necessary costs of the manufacture, transmission and distribution of gas, and to provide a reasonable return upon the value of the property owned and used by the complainant in the manufacture, transmission and distribution of the gas sold by it to its consumers. During the twelve months ended December 31, 1919, and during

73 the portion of 1920 covered by the proofs before me, the said net operating revenue did not and does not as of the present time, provide any return whatever upon the said fair present value of any of the property so owned and used by the complainant company as hereinbefore found.

44. On the basis of my finding of a net deficit from operations in 1919 of 2.54 cents per thousand cubic feet of gas sold, I find that the operating revenues of the gas business of the complainant company, during the year 1919 were not even sufficient to pay the reasonable and necessary costs of the manufacture and distribution of gas; and that in addition to being deprived of any return whatsoever upon the fair and reasonable value of its property devoted to the gas business, the complainant gas company actually suffered a loss from its gas

operations in 1919 of 2.54 cents per thousand cubic feet of gas sold and is suffering a loss at a still greater rate in 1920.

45. The reasonable and proper rate of return upon the capital invested in the plant, distributing system, properties and business of the complainant company, I find to be not less than eight per cent. per annum, amounting to \$132,470.24, calculated upon the fair value of the property used and needed, as hereinbefore found. At no time during 1919 or thus far in 1920 has the complainant company earned any part of such a return.

46. As of May, 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24 per cent. over the average rate per hour for all of 1919; the increase in the shop department has been 20 per cent., and in the office employees 10 per cent. The average increase in the prices paid for materials other than coal and oil, from 1919 to May, 1920, has been 10 per cent.

74 47. Since 1914 the complainant company has paid no dividends upon any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds. During 1919 and 1920, it has necessarily borrowed money also to enable it to meet in full its current bills for coal, oil and materials.

48. During the twelve months ended December 31, 1919, the revenues and expenses of the gas business of the complainant were as follows:

Revenues.	
Sales of Gas.....	\$334,614.83
Miscellaneous Operating Revenues:	
Rents from Gas Appliances.....	13,839.53
Gross Profits from Sales of Gas Appliances.....	8,465.39
Interest on bank balances.....	308.60
Interest on consumers' final bills.....	5.44
Interest on Main Contracts Deposits.....	81.10
	<hr/>
	\$357,314.89
Expenses.	
Cost of Production.....	\$241,176.84
Cost to Distribute.....	91,331.63
Renewals and replacements.....	10,086.41
Taxes and interest thereon.....	23,794.71
	<hr/>
Total expenses.....	\$366,389.59
Total revenues.....	\$357,314.89
	<hr/>
Net loss from gas business.....	\$9,074.70
Deficit below a reasonable return on complainant's investment as hereinbefore found.....	\$141,544.94

75 In the above-stated finding of the revenues and expenses of the complainant company, I have eliminated, as not properly to be included for the purposes of my present inquiry whether the maximum rate prescribed by statute has been, is, and will continue for a period of indefinite duration to be, confiscatory, the company's outlays in 1919 for "defensive emergency service," amounting to \$747.46, and for the expenses charged in that year on account of the present suit in equity, amounting to \$15,518.73.

49. With the approval of the defendant Public Service Commission for the First District, the Consolidated Gas Company of New York, in the year 1913, acquired and now owns all of the capital stock of the New York and Queens Gas Company (except qualifying shares). The Consolidated Gas Company of New York apparently does not own any of the bonds of the complainant company.

50. I find that the complainant company has complied with the provisions of Chapter 125 of the Laws of 1906, with reference to the candle-power and with the requirements of law regarding pressure.

51. Various matters comprised within the issues referred to me by the order of May 23rd, 1919, I have discussed in greater detail in a separate opinion which is herewith submitted and made a part of this report. It is my intention that the facts, and the conclusions regarding the law, set forth for reasons of convenience in that separate document, shall be deemed a part hereof, with the same force and effect as though they had been physically incorporated in this report.

52. I recommend that it be adjudged and decreed that Chapter 125 of the Laws of 1906, in so far as it provides that the complainant New York and Queens Gas Company shall not now charge or receive for gas manufactured, furnished or sold by it, a sum per thousand cubic feet, in excess of a rate of one dollar (\$1.00) per thousand cubic feet, is illegal and void, because in contravention of Section 10 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the said Constitution, and that the complainant New York and Queens Gas Company have the other and further relief against the defendants in this suit which is asked for in the complainant therein.

All of which is respectfully submitted,

ABRAHAM S. GILBERT,
Special Master.

Dated New York, July 16th, 1920.

77 United States District Court, Southern District of New York.

In Equity.

No. 15-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, at Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Opinion of the Special Master.

The complainant New York and Queens Gas Company is engaged in the business of manufacturing gas in that part of New York City known as Flushing. It delivers gas to consumers in the Third Ward of the Borough of Queens in the City of New York. By statute it is required to furnish gas to its private consumers at a price not exceeding \$1.00 per thousand cubic feet. It is also required by statute to furnish gas to the municipality at a price not exceeding seventy-five cents per thousand cubic feet.

In this action the complainant company attacks the constitutionality of the statute which limits its charge to private consumers to the sum of \$1.00 per thousand cubic feet, upon the ground that such statute is confiscatory of its property.

78 The complainant contends that it does now and has for some time past cost more than \$1.00 per thousand cubic feet to make, distribute and deliver the gas to its consumers. If that claim is sustained by the evidence in this case, the value of the property used in the manufacture and distribution of the gas is of only secondary importance. The question involved in this case is not what rate ought to be authorized by statute or by order of the defendant Public Service Commission had no statutory limitation been imposed, but whether the maximum rate now permitted by statute is confiscatory.

Necessary Elements in Complainant's Operating Costs.

It is conceded at the outset that in order to make gas, it is necessary to have coal, oil and other incidental manufacturing material and the labor necessary to make and distribute the gas. It is also conceded that in the operation of gas plant, repairs are required which call for repairs material and repair labor. In order to determine the cost of making and distributing gas, it becomes important to find out how much of the various materials is actually and reasonably used in the manufacture of gas and the reasonable cost of

that material; the amount of labor required in the manufacture of gas, and the reasonable cost of that labor; the amount of repairs required, on the average, and the amount of material and labor required for that purpose, and the reasonable cost thereof; and the reasonable expenses of managing the business, delivering the gas to the consumers and collecting the moneys payable therefor, including the necessary clerical hire, the pay of meter readers, indexers and bill clerks, the executive salaries, and the like.

79 Scope of the Complainant's Proofs.

For the purpose of proving the quantity and cost of materials, labor and the like, as well as the revenues and expenses of its gas business, the complainant company presented to me, as previously to the accountants and experts of the defendants, all of its invoices and vouchers for coal, oil and other materials and supplies purchased, together with its various payrolls, works reports, records of manufacture, office reports, and the like, together with its books of account in which the items of expenditure and revenue shown by these underlying records had been entered. All of this data covered the year 1919 and the first five months of the year 1920. To the invoices for coal, oil and other materials, were attached the certificates evidencing the receipt of the quantities indicated, and to the oil invoices were also attached the certificates of the New York Produce Exchange Inspectors attesting the quantity and quality of the oil delivered. The public accountants employed by the complainant had checked these vouchers and records to the books and certified to the accuracy of both. There was also submitted to me the sworn testimony of qualified witnesses as to the actual cost of oil, coal and other materials from 1906 down to the present time, including the years 1919 and 1920, and the sworn testimony of experienced operating engineers as to the quantities of coal, oil and other materials, and of the labor, actually required for the manufacture of gas and the wages necessarily paid to labor during this period, including 1919 and the first five months of 1920.

The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs thereof, and other information as to the revenues and expenses of the complainant company during the years from 1906 to 79 $\frac{1}{4}$ 1920. Various of the underlying records of 1918 and prior years were also produced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants.

Increased Sales and Increased Costs.

The evidence before me is practically without dispute that since the first of January, 1920, labor cost has considerably increased over the year 1919, and that material cost has considerably increased over the year 1919. On the other hand, the vice-president and

operating manager of the complainant, Mr. Spear, stated on one of the closing days of the trial that in his judgment the sales of the complainant company during 1920 will be about 15 per cent in excess of the sales during 1919. In my opinion, a finding to this effect is justified and required by all the evidence, although counsel for the complainant points out that from 1918 to 1919 the increase in sales was only 2.6 per cent and that the average increase during the past five years has been only 7.02 per cent.

An increase of fifteen per cent in the volume of sales will, in my judgment, necessarily tend to reduce the cost, in terms of cents, per thousand cubic feet of gas sold, of certain of the items classified as distribution costs, particularly in the category of commercial and general office expenses. Any such decrease in the unit cost of these commercial expenses (in the meter-reading, bookkeeping and billing departments, for example) will probably prove less than would otherwise be the case, by reason of the fact that the company's present office force is small and is compelled to work on an overtime basis to look after the present volume of sales, and additional staff

may be required for increased sales; but as fairly as I can 79 $\frac{1}{2}$ figure it, increased sales of fifteen per cent, over 1919 would ordinarily make a difference of about four cents per thousand cubic feet, in the distributing cost of the gas sold by the complainant. Any such saving in the unit expenses of the general office and commercial departments will, however, be at least absorbed by the increased cost of gas manufacture and the increased cost of the labor and material entering into the work of distribution, so that the net effect on the unit distribution costs as they now appear for 1920 will be that, despite the prospective increase in sales, the gas as delivered to the consumer, including the commercial expenses, does and will cost considerably more per thousand cubic feet than in 1919 or early 1920.

1920 Costs Higher Than Those of 1919.

If, therefore, the actual results of operations for the year 1919 show the rate to be confiscatory, it follows that the net result of operations for the year 1920, which can only be determined in definite figures when the year has ended and the books for 1920 have been closed, will show a larger deficiency than appeared as the result of operations in the year 1919. I have therefore concluded to base my findings as to the cost of making and distributing gas especially upon the operations and costs established for the year 1919, those figures being taken, of course, in the light of what I have just said, that the cost of making and distributing gas in the year 1920 will be in excess of the figures I reach for the year 1919.

80 Details of 1919 Costs as Shown by the Company's Books.

The books of account, vouchers, manufacturing records, works reports, and the like, of the complainant company were placed at the disposal of the defendants, more than six months in advance

of the beginning of the trial before me, along with copies of the principal statistical exhibits which the complainant proposed to offer in evidence upon the trial, and were carefully and thoroughly examined and analyzed by counsel for the defendants, their accountants and engineers. These operating records show that in the year 1919 the actual cost of the gas made at the complainant's works was 63.45 cents per thousand cubic feet of gas made, and that the loss in volume based upon the quantity of gas metered at the consumers' premises, to which I shall presently refer in discussion of this so-called "unaccounted for gas", was 11.03 per cent of the gas made. On that basis, the complainant's actual cost of making gas in the year 1919 was 71.73 cents per thousand cubic feet of gas sold. The actual distribution expenses, including the commercial expenses (and including also an item of 0.22 cents for defensive emergency service still required in 1919 and 4.62 cents on account of the expenses of the present suit in equity, totalling 4.84 cents, both of which items it is my judgment that I ought to disregard for the purposes of my present inquiry, for reasons hereinafter indicated), aggregated 32 cents per thousand cubic feet sold; renewals and replacements three cents per thousand cubic feet sold; taxes and interest thereon 7.07 cents per thousand cubic feet sold, making a total actual cost of \$1.1380 per thousand cubic feet of gas sold. The complainant's income from the sale of gas in 1919, according to these same books and records, was 99.51 cents per thousand cubic feet, showing a deficiency below actual cost of 14.29 cents per thousand cubic feet of gas sold. As against this deficiency, however, the complainant company credits the account with the profit made on its sale of gas appliances, the moneys received as rental of such appliances, and certain interest items, aggregating 6.75 cents per thousand cubic feet of gas sold, leaving a net deficiency during the year 1919 of 7.54 cents per thousand cubic feet of gas sold, or in money, the sum of \$25,340.89.

The Uniform System of Accounts.

It becomes important, therefore, to determine whether these figures appearing in the books and records of the complainant company have been sustained and confirmed by the proofs submitted in the present record, and whether any of the items of expenditure shown in the accounts should be disregarded by me in determining whether the statutory rate was and in confiscatory.

The books and accounts of the complainant company, like the accounts of all other gas companies in the City of New York since the year 1908, have been kept under the jurisdiction of the defendant Public Service Commission of the State of New York for the First District. The Public Service Commission has prescribed a uniform system of accounts which is observed by the complainant company, and possesses authority to examine the complainant's books and records at all times and require changes in the accounts, if deemed advisable. The powers and duties of the defendant Com-

mission are set forth in full in the statute known as the Public Service Commissions Law, and it is unnecessary, I think, for me to dwell at length upon the provisions of that statute at this point.

Unit Quantities of Materials and Labor.

The first question to determine is whether the quantities used by the complainant company as they appear from the books and records of the company are correct and set forth a reasonable and necessary use of materials and of labor, or whether there has been a waste of gas-making material and unnecessary use of labor forces and the books do not accurately reflect the quantities actually needed and used. I have analyzed these figures in the light of the defendants' proofs and also of the sworn testimony given by Mr. Woods, an operating engineer of wide experience produced by the complainant company, whose testimony has not been directly attacked or contradicted by any witness. Except for some minor variances when contrasted with the 1919 operating results, such as his estimate of "unaccounted-for" gas at 10 per cent. (the record for 1919 shows 11.03 per cent.), his slight underestimate of the required boiler fuel, and the slight difference as to the figures given by him for the gas oil required, it may be said that the results shown in the operating records closely accord with the sworn expert opinion of Mr. Woods, and are confirmed by his judgment as to the results which might reasonably be looked for and secured.

Complainant's Records Accurately Kept and Reflect Efficient Results.

As to some items, the complainant company in 1919 did a little better than Mr. Woods said he would expect to find its operating staff doing under average operations as of the present time. As to gas oil, Mr. Woods' estimate was the average use of 4.2 gallons per thousand cubic feet; the operating results showed an actual use of 4.19 gallons in 1919 and of 4.26 gallons in 1918. As I have already indicated, Mr. Woods thought that the "unaccounted-for" gas would ordinarily not exceed 10 per cent.; whereas the operating records showed an actual unaccounted for in 1919 of 11.03 per cent., which seems to me a reasonable figure, having in mind all present conditions. On the whole, I am convinced that the operating records of the complainant company have been honestly and accurately kept, and accurately reflect actual, efficient, and reasonable operating results. In arriving at a conclusion, therefore, in this case, I have accepted the actual operating results for the year 1919 as they appear from the books of the complainant company, showing the cost of manufacture to be 63.45 cents per thousand cubic feet of gas made.

The Volume of "Unaccounted-for" Gas.

The question of the so-called "unaccounted-for" gas becomes important in order to determine the cost of the gas actually supplied

to consumers. It is conceded that there is an unavoidable loss in gas volume known in the art as "unaccounted-for" gas. The fact that in any year, in order to deliver a certain number of million cubic feet of gas to consumers, a larger quantity of gas has to be made and sent out than is ever metered on the consumers' premises, is one of the factors affecting and determining the cost per thousand cubic feet of the gas delivered to the consumers. Counsel for the defendants contend that the "unaccounted-for" gas of the complainant in the year 1919 was greater than in prior years. That appears to be the fact. I am asked by counsel for the defendants to find that this increase in the "unaccounted-for" gas during the year 1919 has not been explained by the complainant. I am unable to make such a finding because there is ample evidence in the case indicating that it is practically impossible to regulate the amount of "unaccounted-for" gas and that factors were operative in 1919 which tended to increase the percentage. Weather and other conditions affect the gas in such manner and form that it is impossible to say that "unaccounted-for" gas should be kept below a certain percentage. Some years it seems to run very high, and in other years it seems to run quite low. This variance is caused by a number of changing

84 conditions. I feel that I am compelled, in considering the operating results of the complainant company, to accept the actual conditions as I find them during the year 1919, and to accept the "unaccounted-for" gas at the figure of 11.03 per cent., which was the exact amount of such loss in volume during that year. In this connection, of course, it should be borne in mind that in 1920 or in some subsequent year this percentage may be lessened, so that the actual cost of making the gas in such year, if based upon the rates of pay for labor and the price of materials prevailing in 1919, might be somewhat less than the figures now shown for 1919. But here again it should be noted that although there may be a reduction in the percentage of "unaccounted-for" gas, whatever reduction may take place from such a cause will be more than absorbed and offset by the increased cost of materials and of labor. Upon the basis of 11.03 per cent. of "unaccounted-for" gas, the complainant's actual cost of manufacture during the year 1919 was 71.73 cents per thousand cubic feet of gas sold.

The Cost of Distribution.

This brings me to the cost of distribution and other expenses, including the commercial expense. The defendants challenge only four of the items included in this general item of "distribution and other expenses." They ask me to strike out from the 1919 outlays the item of \$747.46 for "defensive emergency service"; the item of \$15,518.73 representing the charges made in 1919 on account of the expenses of the present rate suit; interest on insurance, amounting to \$57.58; and increased fire insurance, \$477.30. I cannot agree with counsel for the defendants in their claim that I ought to eliminate the items "interest on insurance, \$57.58" and the item "increase in fire insurance, \$477.30."

Eliminated Items.

I do, however, agree with counsel for the defendants that for the purposes of the test I am required to make in this case, I should eliminate the amount charged in 1919 to the account of the present rate case, amounting to \$15,518.73 and the items appearing in the 1919 accounts for defensive emergency service amounting to \$747.46. I limit my statement as I have with respect to these two items last mentioned because I agree with counsel for the complainant that in establishing a new rate an allowance must be made for the necessary expense to which the complainant company has been put in establishing its right to charge an adequate and remunerative rate for the gas sold by it, despite the existing statutory limitation, which I herein find to be confiscatory. I draw a distinction between analyzing the usual and necessary operating expenses of the company for the purpose of determining whether, in the first instance, the maximum rate fixed by statute is confiscatory, and the analysis of the complainant's expenses which must be made in fixing the fair rate for the future. The latter, of course, must make provision for the complainant's reimbursement for the expense of freeing itself from a statute which the complainant has proved to be confiscatory. That, however, remains to be considered in the fixation of a new rate.

The two items which I have thus stricken out for the purposes of the present inquiry aggregate \$16,266.19. The total amount of actual distribution expense for 1919 was \$107,597.82. Deducting \$16,266.19 from \$107,597.82, gives \$91,331.63; this divided by \$336,000,000 cubic feet sold in 1919 makes the allowable distribution expense approximately 27 cents instead of 32 cents as shown on the books of the complainant company.

Renewals, Replacements and Taxes.

The item of the cost of providing for the renewal and replacement of property withdrawn from service seems to be agreed upon by all parties at three cents per thousand cubic feet of gas sold. As to the taxes and interest thereon, amounting to \$23,794.71, or 7.07 cents per thousand sold, the defendants ask me to eliminate the interest on unpaid taxes, amounting to \$233.71, and the Federal income tax item of \$443.25. I doubt whether these items, particularly the latter, should be included in the cost of taxes to the complainant company, but if I should eliminate either or both of them, it would make no substantial change in the tax figure, so that in arriving at my figures, I have taken the tax item as 7.07 cents per thousand cubic feet of gas sold.

Conclusions as to 1919 Results.

There appears to be no dispute that the income from sales of gas amounted to 99.51 cents, nor does there appear to be any dispute as to the amount of credit for miscellaneous operating revenue, viz.,

6.75 cents per thousand cubic feet of gas sold. I have reached the conclusion, therefore, that the actual cost of making and distributing gas during the year 1919, including taxes and the renewal and replacement of property, was \$1,0880, against which there is to be credited 6.75 cents, leaving a net cost of \$1,0205, or a deficiency over the sum realized from gas sales (99.51 cents) of 2.54 cents per thousand cubic feet of gas sold. This sum, multiplied by 336,241,-400 cubic feet of gas sold during the year 1919, gives \$8,540.53 as the actual deficiency in operating expenses for the year 1919, without regard to any return upon any of the complainant's investment

87 in the property used in its gas business. These figures show a confiscation of the complainant's property in 1919 and a confiscation thereof to an even greater extent thus far in 1920, and there might appear to be no necessity for my going further and ascertaining the present fair value of the property upon which the complainant was and is entitled to earn a reasonable return. Both sides, however, have asked that I make findings with respect to the complainant's property and its value, and in order that the reviewing court may have before it the exact situation of the complainant, I have made my findings in detail with respect to the property and its value.

Franchises and Rights Acquired by the Complainant.

The complainant company was organized in the month of July, 1904. Between the time of its organization and its merger with the Newtown and Flushing Gas Company, it acquired all of the outstanding securities of the Newtown and Flushing Gas Company. It issued for these securities its own securities—\$600,000 of stock and \$650,000 of bonds. At the time of the merger, the complainant company apparently, so far as this record discloses, owned no property, had no cash, and had no assets of any kind or description. No inventory and appraisal of the property acquired by the complainant seems to have been made the basis of the merger. The securities issued by the complainant for this purpose cannot, it seems to me from the present record, be considered to have been worth more than the property thereby acquired. The Newtown and Flushing Company, when it was merged with the complainant company, owned certain tangible and intangible properties, including certain franchises issued by various village and town officials. No proof was offered tending to show any specific sums as paid to the public

88 authorities for franchises, or what specific amounts were paid by the companies which acquired these franchises to the persons and corporations which theretofore owned them. The record does not show to what extent the cost of these franchises and rights to the Newtown and Flushing Gas Company as shown by its books placed in evidence by the defendants represented actual payments for the same to public authorities by that company or its predecessors.

Agreement as to the Cost of Present Tangible Property.

Fortunately, there has been agreement between the parties upon this record as to the cost, up to and as of August 1, 1904, of the tangible properties still in existence and use, which were acquired by the complainant company on that date. The complainant and the defendants agree that the tangible property acquired on August 1, 1904, and still in existence and use, did cost, and as of that date was reasonably worth, at least, \$280,108 and I accept that figure in arriving at the complainant's total investment and the present value of its property. Since that date, the net additions to the plant and property of the complainant have cost \$850,389.08, and there is no dispute as to this item. These two items not in controversy cover the actual cost of the tangible property now in use, aggregating \$1,130,497.08.

Additional Elements of the Original Investment.

To the first of these items, the complainant asks me, on the basis of Mr. Miller's testimony and the book entries as of 1904 and subsequent years, to add \$320,350 for the preliminary organization and development expenses of the enterprise and other items of cost set forth in Mr. Miller's estimate (Complainant's Exhibit 96). It

is conceded by the defendants that in the initiating of a gas
89 enterprise there is necessarily incurred preliminary and de-
velopment expenses, cost of financing, engineering and su-
perintendence expenses, interest and taxes during construction, and
the like as to which varying amounts were testified by the witnesses
on each side, principally based upon opinions as to the proper per-
centages to be allowed for such items. The defendants contend,
moreover, that there is no adequate proof before me on which I
should base any finding of value for the franchises and rights.

"Going Value."

The complainant further contends that, under the decisions of the courts, I must include in my figures, if they are to be complete and state the full reproduction cost, an amount for so-called "going value." I readily agree that in arriving at a statement of the full cost of bringing such a gas project into being and its business to a profitable point, an allowance for "going value" would have to be included. The complainant's testimony in this case was that these elements of cost commonly referred to as "going value" would, as to this company, amount to at least \$500,000. My present task, however, does not necessarily call for such an effort to cover specifically all elements of reproduction cost. I also readily accept the argument that in arriving at the cost of the tangible and intangible property of the complainant, I should expect to find that the franchises and rights had cost a substantial sum and that some allowance must be made for the necessary but undistributable expenses

already referred to. The difficulty here, however, is in finding a satisfactory figure from the evidence available in this record.

The \$650,000 of bonds originally issued by the complainant company upon the purchase of the securities of the Newtown and Flushing Company are probably now in the hands of persons who at

that time had no connection with the Newtown and Flushing
90 Company. All of the stock of the complainant company is owned by the Consolidated Gas Company of New York. As

I have already pointed out, one difficulty here is that I have not before me the satisfactory basis for a finding that the securities issued by the complainant company were worth any more than the book value of the tangible and intangible property acquired, or that under the circumstances already referred to, such property, at the time it was acquired, had cost or was worth more than was shown by the books of the company from which it was acquired.

Basis of Finding as to Undistributable Structural Costs.

At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at \$694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totalling \$24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of \$280,108 exclusive of franchises and rights and "going value" and the undistributed structural items under consideration. The deduction of these two items from the book total of \$694,678.00 leaves only \$390,380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the "going value," and the undistributable structural items hereinbefore mentioned. There is sufficient evidence to warrant my conclusion upon the present record that the

91 item of "franchises, good will, etc.,," on the books of the complainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in at a total of \$320,350, and also the cost of "franchises and rights," which Mr. Miller puts in at \$500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz.: \$390,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum.

Working Capital.

To the cost of the present property acquired in 1904 and the net additions to such property since 1904, totalling \$1,520,877.94, there

must be added an item for materials and supplies, cash on hand and in banks, and the like, commonly called working capital. The experts for the defendants figure this item for the year 1919 at \$80,000. Mr. Miller, on behalf of the complainant company, figures the item at \$165,000. The expert witnesses called by the defendants frankly concede that the amount to be allowed for working capital is such amount as reasonable business men of experience would require in the conduct of this kind of a business. Taking into consideration the various elements which are and must be provided for in arriving at the necessary amount of working capital, I have reached the conclusion that \$135,000 would be a fair sum to be allowed for working capital. I therefore reach the conclusion that the tangible and intangible property, including working capital, used and useful during the year 1919 and as of January 1st, 1920, by the complainant company in the conduct of its gas business, represents an actual investment, and is reasonably and fairly worth at this time, at least the sum of \$1,655,877.94, and that it is on at least this amount that the complainant company was and is entitled to have its rate such as to yield a fair return.

92

Cost and Present Value of Land.

In view of some statements made by me on the record with reference to the value of land and my statement that I would fix the value of land at about \$44,000, I should add that upon analyzing the figures I found that land acquired prior to August 1st, 1904, is included in the agreed item of \$280,108 at \$19.423, plus grading and filling, \$5,000, making \$24,423 for land unimproved and that additions to real estate since 1904 have cost the complainant \$20,630.90, a total of a little more than \$45,153.90.

Compliance with Candle-power Statute.

Statements made by me on the record indicate my views as to the claim made by counsel for the defendants that the complainant company was not entitled to equitable relief because of its alleged failure to comply with the statutory requirements as to candle power, and I therefore deem it unnecessary to say anything further herein upon that subject, which I discussed at considerable length in my opinion as Special Master in the Consolidated Gas Company case. In view of the similarity of the record facts, I refer to that opinion for a fuller statement of my views upon the subject. I am clear that this complainant has complied with the candle-power provisions of the statute.

93

Basis of Finding of "Present Value."

It is proper for me to say before concluding this opinion that I have based my finding of fair present value upon what I conceive to be the actual cost of the property to the complainant company. My reasons for the adoption of this criterion or standard of present

value in such a suit as this were set forth at length in my opinion as Special Master in the Consolidated Gas Company case, to which I refer for a more comprehensive statement of those reasons. In my opinion the property now used by the complainant company is worth at least that sum.

The Undisputed Testimony as to Present Reproduction Cost.

The complainant company offered testimony as to the present reproduction cost of the tangible property of the complainant company. The proof was undisputed that the complainant owns and uses the items of tangible property which it inventoried as of January 1, 1920, and that, exclusive of working capital and the undistributable structural costs, the cost of reproducing the tangible property, as of January 1, 1920, would be at least \$2,099,621 as compared with the complainant's actual and unimpaired investment in the same tangible items of only \$1,130,497.08. In other words, leaving out working capital and the undistributable working costs, it would cost nearly twice as much to reproduce the tangible property today as it did actually cost the complainant and its predecessors.

Of course, to this figure of \$2,099,621, to reach a complete figure of present reproduction cost, there must be added amounts, based

on the present cost of such items, for organization and de-
94 velopment expenses prior to construction; cost of financing;
engineering, superintendence and general contractors' ex-
pense and profit; interest during construction; taxes on land during
construction; the cost of franchises and rights; administrative, legal
and miscellaneous expenses during construction; certainly the sum
of \$135,000 for working capital; and perhaps also a suitable amount
for "going value." The above-stated investment figure of \$1,130,-
497.08 likewise does not include any allowance for the cost of these
items prior to August 1, 1904, although they were, of course, prin-
cipally incurred before that time. In so far as these undistributed
elements arise in connection with the present cost to reproduce this
property, I have not thought it necessary to make a finding as to
any of them, and in so far as they arise in connection with the com-
plainant's present aggregate investment, I have declined to make
any finding assigning to them a value in excess of the item repre-
senting their cost to the complainant and its predecessors, viz.: \$390,-
380.86, in which they are included to an extent deemed adequate
for the purposes of this case.

No Deduction for "Accrued Theoretical Depreciation."

In determining that the complainant's property has a fair present value of at least the amount of the complainant's actual investment herein as found by me, viz., at least \$1,655,877.94, I have made no deduction for what is termed "depreciation," in whatever way calculated. Under any basis of determining present value the complainant's property is now worth at least the amount of such investment therein, and the sound rule of law and policy seems to require

the allowance of a reasonable return upon at least that sum.
95 Upon the present trial, it was insistently urged upon me by some of the defendants that there should be deducted from the cost of the property (irrespective of whether "original," "pre-war," or "present reproduction" cost be under consideration) an amount claimed to represent so-called "accrued theoretical depreciation," based upon an assumption of "life expectancy" for a gas plant and equipment and the estimated or known number of years since the same was erected or installed. From the testimony given upon the trial, I was strongly impressed that in respect of a very large proportion of gas property, there is no ascertainable "life expectancy." The withdrawal of such property from service comes about from inadequacy or obsolescence which cannot be forecast in terms of years or even satisfactorily guessed at. Certain parts of operating machinery and equipment are of course subject to the effects of use. The replacement of these wearing parts enters into the cost of repairs. As to the substantial units of structures, apparatus, mains, and equipment, their withdrawal from the property accounts comes about from causes not attributable to the condition of the property itself or any diminution in its operating efficiency but varying utterly with the particular plant, time, local conditions and service demands and hence capable of being forecast only as the occasion for such change in plant or equipment becomes imminent.

The Renewal and Replacement of Gas Property.

In other words, in order to keep abreast of improvements in the art of making and distributing gas when and as it becomes economically advantageous to do so, and to meet the growing demand of the public for service more adequately and economically than would be possible through merely making additions and extensions to
96 existing plant and equipment, larger or better and more economical and efficient units of plant and equipment are from time to time installed, to take the place of units which still are operating as efficiently as when first installed. The loss due to such supersession cannot properly be said to have accrued during the period the superseded unit was in service. It occurred when supersession took place. It became a proper charge against the economies to be realized therefrom. It furnished no basis for the imposition of an additional charge against the user of the superseded unit during the period of its useful service over and above the higher cost of operating it. Such a charge could not be justified either on the ground that the unit was losing potential life, or that the capital invested in it was being consumed, because neither is true.

Additional Burden on the Consumer Unwarranted.

In order to justify the deduction of "theoretical depreciation," I was asked in this case to assume that a "depreciation reserve" equal to the computed "theoretical depreciation" had been collected from the public, and then to deduct from the company's investment the

amount of such assumed reserve. No such reserve had, in fact, been collected or accumulated by this company. The rate chargeable did not permit it, and there is no reason to believe that the Legislature, in prescribing the rate, ever contemplated it. As I have set forth in Findings Nos. 32 and 27 of my Report and as I have elsewhere indicated herein, the complainant gas company has maintained its property and investment intact in the past, through renewals and replacements, at an average actual cost of approximately three cents per thousand cubic feet of gas sold, and no reason appears for believing that it cannot continue to do so on that basis. Even assuming that the statute permitted such a rate, to have imposed on the company's consumers an additional burden nearly twice as great, representing a purely theoretical item of operating cost, merely to accumulate a useless reserve to justify a drastic deduction from investment in some ultimate proceeding as to rates, could not have been justified on any sound theory in the past and cannot now be sustained as to the future.

Effects of an Unnecessary Reserve.

In order to justify the assumption that a "depreciation reserve" was or should have been collected, defendants' witness Hine testified in this case that such a reserve was necessary "so that when the property is retired for any cause whatsoever the fund can be charged with the cost of the property." He testified also that the reserve should be in his opinion "invested in the property," and that when the funds were needed for renewals and replacements they would be provided "by issuing securities against construction work which had been done originally out of this fund, for the money laid aside for this fund, just to reimburse the treasury on account of these expenditures." This view seemed to me to disregard the obvious fact that having deducted the amount of the reserve temporarily invested in property from that on which he proposed the company should be allowed to earn a return, he, to all intents and purposes, destroyed the earning power of such property and investment; that therefore he could not issue any securities against such property, there being no earnings therefrom with which to pay interest on the securities; that the reserve could never thereafter be availed of for the purpose for

which it was alleged to have been created, and that it would 98 be, in fact, as if it had never been created. Thus he not only failed to sustain his contention that a "depreciation reserve" was necessary for the purposes which he alleged, but he proposed to treat the reserve as if he himself believed it to be both unnecessary and ineffectual, except for the purpose of justifying a deduction from the complainant's investment.

It is obvious that the collection of an unnecessary reserve and its periodic deduction from the value of the property in service would operate to effect a piece-meal purchase on the part of the public, of the property used by the utility in its service. In other words, it is really asking the consumer to pay for the plant, instead of paying a return on the investment. If such a consummation is desirable, of which there is no evidence, it should be effected openly, and not sur-

repetitiously under the guise of providing for so-called "theoretical depreciation."

Present Condition of the Property.

Mr. Miller testified that as of April, 1920, the expenditure of \$6,144.07 for repairs, renewals and replacements, would put the plant, structures, machinery and equipment in condition substantially as good as when they were erected or installed. His testimony in this respect was not contradicted by that of any witness. This sum, however, does not, in my opinion, measure any impairment in the present value of the property used and useful in the gas business. It represents merely an unmatured obligation to maintain the property in efficient operating condition out of future earnings, the expert witnesses of both the complainant and the defendants

agreeing that it was and is maintained in efficient and first-class condition. I therefore have not deducted this or any other sum representing so-called "accrued depreciation" from the amount found by me to represent the investment of the complainant in its gas property upon which it is entitled to have its rate such as to yield a reasonable return.

Respectfully submitted,

ABRAHAM S. GILBERT,
Special Master.

Dated, New York, July 16th, 1920.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY Complainant,

vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of Queens County, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Exceptions to Special Master's Report and Opinion.

Please take notice that the within exceptions of the defendants to the Special Master's findings were filed in the clerk's office of the United States District Court on the 6th day of August, 1920.

Dated, August 6th, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
Solicitor for Defendant Charles D. Newton.

Office & Post-office address, Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Defendant Lewis Nixon.

Office & P. O. Address, 49 Lafayette St., New York City.

101 W. H. VAN STEENBURGH,
Solicitor for Defendant O'Leary.

Office & P. O. Address, 27 Cedar Street, New York City.

102 United States District Court, Southern District of New York,

In Equity,

No. 16-44.

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Exceptions to Special Master's Report.

Now come the defendants, Charles D. Newton, as Attorney-General of the State of New York, Denis O'Leary, as District Attorney of the County of Queens and Lewis Nixon, constituting the public Service Commission of the State of New York for the First District, and except to the findings of fact and conclusions of law filed herein by Abraham S. Gilbert, Esq., Special Master herein in the following particulars, to wit:

1. Except to the finding marked "2" of the Master's report, which finds that:

"Immediately prior to the organization of the complainant company, the Newtown and Flushing Gas Company had been furnishing gas to consumers in the Third Ward of the Borough of Queens, that company being the successor of a number of companies which had supplied gas in various portions of the Borough of Queens, and of which one of the manufacturing plants had been located at the same point, hereinafter more fully described, in the village or 103 town of Flushing, since about the year 1856."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. The Master should have found that the town of Flushing including the villages of Flushing and Whitestone was annexed to the city of New York by Chapter 488, Laws of 1896.

2. The Defendants except to finding marked "3" of the Master's Report in so far as it finds that:

"In addition to the property above described, the Newtown and Flushing Gas Company owned, and was in the actual enjoyment of, franchises and rights, certain of them perpetual in character."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it. The Master should have found that all the existing franchises, including those claimed to have been acquired from the Newtown and Flushing Gas Company are only to lay and operate mains and pipes in the streets, highways and public places in the Third Ward, Borough of Queens, former Village of Flushing, Village of Whitestone and in the town of Flushing outside of the then (May 1, 1897) incorporated villages.

And that the "franchise" to operate in the former village of Whitestone will expire by its terms December 30, 1922.

104 3. Defendants except to finding marked "4" of the master's report in so far as it finds that:

"On or about the 12th day of July, 1904, the New York and Queens Gas Company acquired all of the capital stock and all of the outstanding bonds of the Newtown and Flushing Gas Company, and on or about July 18th, 1904, by resolution adopted and filed in accordance with the requirements of the laws of the State of New York, the New York & Queens Gas Company merged the Newtown and Flushing Gas Company into itself. By virtue of the merger and of the statute pursuant to which it took place, the complainant New York and Queens Gas Company became possessed of and became the owner in fee simple of all of the real and personal property owned by the Newtown and Flushing Gas Company, the owner of the franchises and rights then owned, possessed or enjoyed by the Newtown and Flushing Gas Company, and the owner of the business established and developed by the Newtown and Flushing Gas Company and its predecessors."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that at the time of the merger July 12, 1904, the complainant company owned or possessed no cash or property whatsoever, and that when complainant began business August 1, 1904, it was entirely with the property of the Newtown and Flushing Gas Company. And the master should have found that the cost or value if established on July 18, 1904, of the property which was acquired by complainant company from the Newtown and

Flushing Company and its predecessor companies in earlier years cannot be ascertained.

105 And that the directors and officers of the Newtown and Flushing Gas Company and the complainant company prior to and at the time of the merger were the same.

4. Defendants except to finding marked "5" of the report in so far as it finds that:

"The complainant New York and Queens Gas Company has, ever since the date of the said merger, owned, possessed, used and enjoyed all of the said franchises and rights of the said Newtown and Flushing Gas Company, and still does own, possess, use and enjoy the said franchises and rights and each of them, together with additional rights and franchises from time to time acquired by it; and the complainant company, by virtue of the said franchises and rights, has ever since the said merger maintained, and still does maintain, its mains and services in the streets, highways, alleys and public places of the City of New York, particularly in the Third Ward of the Borough of Queens, and has supplied and still does supply gas through the said mains and services to the inhabitants of the said Third Ward of the Borough of Queens."

And the Master should have found that the New York and Queens Gas Company has since its incorporation and merger with and into the Newtown and Flushing Gas Company acquired no additional rights or franchises.

5. The defendants except to finding marked "6" in so far as it finds that:

"As at present constituted, the plant consists of three Lowe type water-gas generator sets, one set being eight feet, six inches in diameter, and two sets being each seven feet, six inches in diameter, which provides for the plant a working capacity not exceeding 2,250,000 cubic feet of gas per day. By the addition of high pressure blowing apparatus, this working capacity will be increased to

106 not exceeding 2,750,000 cubic feet of gas per day. In connection therewith, the complainant owns and uses various other apparatus, equipment, appliances and appurtenances necessary for the manufacture and distribution of water-gas, including a gas storage holder of 1,000,000 cubic feet capacity, a gas storage holder of 100,000 cubic feet capacity, and a relief holder of 250,000 cubic feet capacity, which, in emergency, can also be used alternatively as a gas storage holder. In the streets, highways, alleys and public places of the Third Ward of the Borough of Queens, the complainant company owns and uses 658,727 feet of mains of various sizes, and 7,998 services, through which it furnishes gas to approximately 11,000 consumers. The complainant also necessarily occupies, under lease, and uses in the conduct of its business, a shop building on Amity Street in Flushing, for the accommodation of the department engaged in the installation of meters and appliances and in other gas-fitting work, and a store-room and office

building on Main street, in Flushing, for the housing and accommodation of its general offices, its bookkeeping staff and commercial department, and a display-room wherein are exhibited and offered for rental or sale domestic and industrial appliances designed to increase the use of gas and make such use more economical, efficient and satisfactory to consumers."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that the working capacity of the plant does not exceed 1,698,000 cubic feet of gas per day; that the complainant company owns 657,584 feet of mains of various sizes and 7,641 services from which it furnishes gas to approximately 10,357 consumers. That the evidence does not justify a finding to the effect that the store-room, office building, and display room, make for the more economical, efficient and satisfactory use of gas to consumers. That the evidence does not justify any finding to the effect that the rated capacity of the generators (2,750,000) or by the addition of any pressure blowing apparatus the working capacity of the plant will be increased to not exceeding 2,750,000 cubic feet per day. That the evidence does not warrant any finding as to the extent of use of mains and services.

6. The defendants except to the finding marked "7" of the Master's report which finds that:

"In the year 1919, in compliance with the determination and order of the defendant Public Service Commission that consumers in an outlying portion of the Third Ward known as Douglaston and Douglas Manor, distant from Flushing about six miles, should be furnished with gas, the complainant New York and Queens Gas Company, up to May 1, 1920, laid and installed 31,330 lineal feet of four (4) inch transmission main and 9,928 feet of 16 inch main to enable the use of the high-pressure transmission system, together with 38,934 lineal feet of street mains, and also the services, governors, and other apparatus necessary in connection therewith, in order to supply gas to that territory, necessarily expending for this purpose, up to May 1, 1920, no less than \$145,735.71. Since on or about the 28th of November, 1919, the complainant has been furnishing gas to the inhabitants of said additional territory through the use of the said mains and a high-pressure distribution system, by means of which gas manufactured at its plant in Flushing is compressed and transmitted through the said four-inch main and distributed to consumers in Douglaston and Douglas Manor."

On the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it. The Master should have found that the complainant unnecessarily hindered and delayed the furnishing of gas to Douglaston and Douglaston Manor, thus causing the cost to build the extension to increase to \$145,735.71 on May 1, 1920.

7. The defendants except to finding marked "8" of the Master's Report which finds that:

"Since January 1, 1909, the books of account of the complainant company and of all other gas companies in the City of New York have been required to be kept in accordance with the rules and regulations of the defendant Public Service Commission of the State of New York for the First District, which Commission has had certain jurisdiction over said companies pursuant to the provisions of the Public Service Commissions Law of the State of New York, and I find that the books of the complainant company have been kept in conformity with the said rules and regulations and that they accurately set forth the facts therein undertaken to be shown."

On the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the Master should have found that the books of the complainant company are not kept in conformity with the rules and regulations of the Public Service Commission and that officers of the complainant company testified at various times to the effect that particularly specified accounts required under the uniform system of accounts were not carried at all on the books of the complainant company.

8. The defendants except to finding marked "9" of the Master's report which finds that:

109 "By Chapter 125 of the Laws of 1906, which prescribed a maximum rate of eighty cents per thousand cubic feet of gas sold in the Borough of Manhattan and in certain portions of the Boroughs of The Bronx and Brooklyn, the Legislature of the State prescribed, from and after the year 1910, a maximum rate of one dollar for certain outlying portions of the City of New York, including the territory served by this complainant, the pertinent provisions of the said statute being as follows:

'A corporation, association, co-partnership, or person engaged in the business of manufacturing, or furnishing or selling illuminating gas in the City of New York * * * shall not charge or receive for gas manufactured, furnished or sold in said City, a sum per thousand cubic feet in excess of the following rate:

(2) In * * * the second, third and fourth wards in the Borough of Queens * * * \$1.'

It was further provided in and by the said statute that:

'The illuminating gas furnished by any corporation, association, copartnership or person, shall have an illuminating power of not less than 22 sperm candles of 6 to a pound, burning at the rate of 120 grains of spermaceti per hour, tested at a distance of not less than 1 mile from the distribution holder by a burner consuming 5 cubic feet of gas per hour, and each 100 cubic feet of gas shall not contain more than 5 grains of ammonia, nor more than 20 grains

of sulphur, nor more than a trace of sulphureted hydrogen. The pressure of illuminating gas in any service mains in said city at any distance from the place of manufacture shall not be less than one inch nor more than two and one-half inches."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that said Chapter 125 of the Laws of 1906 was amended by Chapter 604 of the Laws of 1916, which confirmed and fixed the maximum rate of one dollar 110 per 1,000 cubic feet of gas sold in the said Third Ward of the Borough of Queens.

And the Master should have found that in 1905 the maximum rate for gas furnished to the City of New York was fixed by the Legislature (Chapter 736) at seventy-five (75) cents per thousand cubic feet.

9. The defendants except to finding marked "10" of the Master's Report which finds that:

"Under the construction which the courts of the State of New York have placed upon the provisions of Section 72 of the Public Service Commissions Law of the State of New York (People ex rel. Municipal Gas Company v. Public Service Commission, 224 N. Y. 156), the Public Service Commission of the State of New York for the First District, which otherwise would have plenary power over the rates of the complainant New York and Queens Gas Company, has been given no power or jurisdiction to fix, or to authorize the complainant to charge, a rate in excess of the one dollar rate fixed by Chapter 125 of the Laws of 1906, the said Section 72 of the Public Service Commissions Law providing that the Commission may not fix or authorize a rate for gas in excess of such rate as may have been fixed by statute."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

On the contrary this finding is not one of fact but an attempted declaration of what the law is, as concerns the jurisdiction and powers of the legislature and the respective public service commissions of the State of New York.

10. The defendants except to finding marked "11" of the Master's Report which finds that:

111 "In the manufacture of water-gas of the statutory standard of 22 candle-power, under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and the complainant did, in fact, use on the average of 4.19 gallons per thousand cubic feet of gas made, during the year 1919".

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the number of gallons of gas oil required to make 1,000 cubic feet of gas is variable and is oftentimes as low as 3.6 gallons; that there is no set rule for the number of gallons of gas oil which is required to make 1,000 cubic feet of gas; that the number of gallons depends upon the quality of the oil and the skill of the operator, together with the efficiency of the machine used. And the Master should have found that the years 1918 and 1919 and the period ending May 31, 1920, were abnormal, unusual and unprecedented and should not be used as the basis of any calculations for oil necessary in making 1,000 cubic feet of gas, but an average period should be taken, which period should be from 1910 to 1919, inclusive, all as indicated by the reports of the complainant company filed with the Public Service Commission.

11. The Defendants except to finding marked "12" of the Master's report which finds that:

"The reasonable and necessary average cost of gas oil to
112 the New York and Queens Gas Company during the year
1919 was 6.7 cents per gallon, and the price during 1920 has
been slightly higher, averaging 7.283 cents per gallon during the
period covered by the proofs before me. The present price at which
contracts may be made for the delivery of gas oil, alongside the plant
of the New York and Queens Gas Company is substantially in excess
of 7.3 cents per gallon (including lighterage cost), and is, in fact,
in excess of ten cents per gallon. The trend of oil prices during 1919
and 1920 has been, and has remained, sharply upward, and the
evidence adduced before me affords no reason to believe that, upon
the expiration of the contract under which the complainant is re-
ceiving its gas oil during 1920, it will be possible to secure a new
contract or a supply of gas oil at a price less than ten cents per
gallon,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the evidence shows the years 1918 and 1919 and the period of five months ending May 31, 1920, were abnormal, unusual and unprecedented; that the price paid for oil since 1917 is no criterion of what the cost of oil will be in the future; that the average cost of gas oil for the year 1919 to complainant was 6.66 cents per gallon; that the complainant company has an interlocking directorate with the Standard Oil Company from which company it purchased all of its oil; that it could have obtained its oil free from this combination of interests at a cost less than the prices paid in the year 1919; that any change in abnormal condition of the gas oil market today may tend to reduce the price as well as increase it, which is further reason for believing that the years 1918, 1919 and 1920 must be deemed abnormal years

113 in relation to the cost of gas oil; that this case ought not to be decided upon abnormal and unusual conditions such as now exist; that there is no market price for gas oil; that it is subject, as experience has shown in the past, to violent and sharp

fluctuations; that the complainant company purchasing all of its oil from one company—namely, the Standard Oil Company of New Jersey, makes no real or honest effort to obtain oil from any other company or source, and has not since 1906 endeavored to obtain oil from any other company or any other course, or at a price lower than that quoted by the one company, with which it does business, and with which it has close corporate relations; that no effort was made by complainant to secure a supply of gas oil for the needs only of complainant.

12. The defendants except to finding marked "13" of the Master's report which finds that:

"In the manufacture of water-gas under the conditions obtaining in a plant such as that of the complainant, there is required the use, per thousand cubic feet of gas made, of approximately 37 pounds of anthracite coal of the grade of coal being supplied in recent years, or its fuel equivalent, of which approximately 34 pounds are used in the generators, and approximately three pounds are used under the boilers. In addition, there is also required to be used under the boilers approximately nineteen pounds of bituminous boiler coal or its equivalent in water-gas tar (one gallon of such tar weighing nine pounds and one pound of tar having a fuel value of about 1.7 pounds of the grade of boiler fuel now and recently supplied.) The plant and operating conditions of the complainant company require the use of slightly more boiler fuel per thousand cubic feet of gas made than would be required if it were nor under the necessity of compressing a portion of the gas sent out in order to reach the distant community of Douglaston and Douglas Manor; hereinbefore referred to,"

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on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the experience in the complaint for the years 1910 to 1919, and including the first five months of 1920, shows that the company did not use an amount in excess of 32½ pounds of generator coal per 1,000 cubic feet of gas made; and that the amount of coal necessary to make 1,000 cubic feet of gas depends largely upon the quality of the coal, the efficiency of the plant and the skill of the operator, and that there is no set rule that can be laid down for the number of pounds of coal necessary in making 1,000 cubic feet of gas; and the Master should have found that the company did not use more than 16 pounds of bituminous boiler coal under the boilers. The Master should have found that there is no evidence in this case that more generator or boiler fuel per 1,000 cubic feet of gas would be required to serve the Douglaston extension territory.

13. The defendants except to finding marked "14" of the Master's report which finds that:

"The average cost of the anthracite generator coal used by the complainant during the year 1919 was \$8.28 per gross ton, plus

\$1.08 as the cost of cartage and handling from the dock in Flushing to the coal shortage bins of the complainant, making in all
115 \$9.36 per gross ton; and at the present time the price of such coal is at least \$10.25 per gross ton, plus \$1.25 for such cartage and handling, making in all at least \$11.50 per gross ton,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the year 1919 and the first five months of 1920 were abnormal periods and that the prices during said periods are no criterion of the price of generator fuel; and the master should have taken the average of the prices of generator coal from 1910 to 1919, inclusive; and the master should have found that the price of coal in 1918, 1919 and 1920 was due in a large extent to strikes at the mines, shortage of cars and also the unusual railroad situation; and the master should have found that the cost of cartage and handing coal from docks to works was excessive because such handling was interrupted during the year 1919 by construction work; and the master should have found that complainant's witness Wood testified the cost of handling the coal would be less if the complainant company were to construct a siding from the railroad to the plant; a saving in an amount of at least fifty (50) cents a ton; that the complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain coal through any other source or at a price lower than that quoted by the one (1) company, with which the Consolidated Gas Company does business.

14. The defendants except to the finding marked "15" of the master's report which finds that:

"The average cost of the boiler coal used by the complainant during the year 1919 was \$6.472 per gross ton plus
116 \$1.08 as the cost of cartage and handling from the dock in Flushing to the coal storage bins at the plant of the complainant company, making \$7.552 in all; and the present time the price of such coal is at least \$10.2479 plus \$1.25 for cartage and handling, making at least \$11.4979 in all, the exact extent of the increase which has taken place in 1920 not appearing in the record,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found there was no competent testimony to show what the price of boiler fuel was per gross ton. And the master should have found that the year 1919 and the first five months of 1920 were abnormal periods and that the prices during said periods are no criterion of the price of boiler fuel; and the master should have taken the average of the prices of generator coal from 1910 to 1919, inclusive, and the master should have found that the price of coal in 1918, 1919 and 1920 was due in a large extent to strikes at the mines, shortage of cars and also the unusual

railroad situation; and the master should have found that the cost of cartage and handling of coal from railroads to works was excessive because such handling was interrupted during the year 1919 by the construction work; and the master should have found that complainant's witness Wood testified that the cost of handling the coal would be less if the complainant company were to construct a siding from the railroad to the plant, a saving in the amount of at least fifty (5-) cents a ton; that the complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain coal through any other source or at a price lower than that quoted by the one (1) company, with which the Consolidated Gas Company does business.

117 15. The defendants except to finding marked "16" of the Master's report which finds that:

"16. In addition to the cost of fuel, there is involved in water-gas manufacture the cost of labor handling of fuel used in the generators and under the boilers. In 1918, the cost of labor handling fuel at the complainant's plant, under the rates of pay then in force, amounted to 2.08 cents, and in 1919 to 2.45 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay now in force, the testimony before me showed the cost of labor handling fuel to amount to at least 3.13 cents per thousand cubic feet of gas made."

on the ground that the case is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented as was also the first five months of 1920; and the Master should have taken the average of the prices of these items from 1910 to 1919 inclusive; and said years of 1918 and 1919 and said period of 1920 are improper periods upon which to base any findings as to the cost of making gas, and that the five months' period ending May 31, 1920 and the twelve months' period ending December 31, 1919 are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because of the existing era of high and excessive prices and costs for labor and materials, and also the winter months included in these two periods were extremely severe and unusual and beset with numerous transportation difficulties.

118 And that there is no competent evidence in this record as to what prices for materials are at the present time or will be for the year 1920; and that as to such prices of material it is mere guess and surmise and cannot be forecast by anybody, and is not properly the subject of a finding in this case.

16. The defendants except to finding marked "17" of the Master's report which finds that:

"In the manufacture of water-gas there is also required the use of iron mass, city water and incidental minor materials and supplies.

In the year 1918, this item, in the complainant's plant, amounted to 0.83 cents, and in 1919 to 1.34 cents per thousand cubic feet of gas made. As of the present time, under average operations, the testimony before me showed this item to amount to at least the sum as shown for the year 1919."

on the grounds that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the figures in the table of witness Wood which is incompetent, irrelevant and of no value whatsoever (plaintiff's Exhibit 77); that the total as shown in 1919 by the books is only 1.23 cents, that the total as given in the table of witness Wood (Plaintiff's Exhibit 77) is only 1.25¢ as against 1.34¢ per thousand cubic feet of gas made found by the master; that the years 1918 and 1919 119 and the first five months of 1920 were and are abnormal periods and prices during such times are no criterion of the price of these respective items because of the existing era of high and excessive prices and costs for labor and materials; and the Master should have taken the average of the prices of these items from 1910 to 1919 inclusive; and the Master should have found that there is no competent evidence in this case of what prices for materials will be in 1920 and 1921, and that what will happen concerning prices for materials in the future is a mere guess and surmise and cannot be forecast by anybody, and is not properly the subject of a finding in this case.

17. The defendants except to finding marked "18" of the Master's report which finds that:

"In the manufacture of water-gas, under the conditions obtaining in a plant such as that of the complainant, there is realized as a residual credit, under average operations, about 0.7 gallons of water-gas tar per thousand cubic feet of gas made, such water-gas tar, as of December 31, 1919, having a market or sale value of approximately 4.25 cents per gallon. During the year 1919, practically all of the water-gas tar so realized by the complainant was used by it as fuel under its boilers, being charged to the cost of boiler fuel at the rate of 6 cents per gallon, and being credited at the same figure to the production cost of gas in the complainant's plant during 1919. During the year 1919, the amount of water-gas tar realized as a residual credit, in the manufacture of water-gas in the complainant's plant was 0.7 gallons, and in 1918 0.5 gallons per thousand cubic feet of gas made."

120 on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas, the master should have found that there was no competent evidence of the amount of water-gas tar realized as a residual in making 1,000 cubic feet of gas made, nor any evidence to support the sale value per gallon of such residual; and that there was no evidence of the gallons of drip oil tar per thousand cubic of gas made or of the sale price of said drip oil; that the figures

used by the master in said 18th Finding are based upon hypothetical figures and the table of witness Wood (Plaintiff's Exhibit No. 77) which is incompetent, irrelevant and of no value whatsoever; that the residual and the amount of water-gas tar realized for the year 1919 and the year 1918 are mere guess, as the evidence disclosed the fact that while great quantity of tar and drip oil was on hand, only a small part of the same had been sold during said years 1918 and 1919. The master should have found that 0.8 gallons of water gas tar was realized by complainant as a residual in making 1,000 cubic feet of gas. The prices named by the master in his finding are the lowest prices received by complainant in the past year.

121 18. The defendants except to finding marked "19" of the Master's report which finds that:

"19. The evidence adduced in this record affords no ground for expecting that the prices of materials or the wages paid for labor will be reduced during 1920 or 1921, or at any time which can now be forecast."

on the ground that the same is not supported by the evidence is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no competent evidence in the case of what prices for material and wages will be in 1920 and 1921 and that what will happen concerning prices for labor and materials in the future is a mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding.

19. The defendants except to finding marked "20" of the Master's report which finds that:

"20. There is necessary, in the manufacture of water-gas the employment of gas-making labor, the employment of repair labor, the use of repair materials, and the incurring of miscellaneous works expense. In 1918, under the prices and the rates of pay then in force, the cost of gas-making labor, in the complainant's plant, was 4.67 cents; of repair labor, 1.7 cents; of repair material 1.82 cents; and of miscellaneous works expense 0.37 cents per thousand cubic feet of gas made. In 1919, under the prices and the rates of pay then in force, the cost of gas-making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, of miscellaneous works expense 0.39 cents, per thousand cubic feet of gas made. As of the present time, under average operations and the rates of pay and prices of materials now in force, the testimony before
122 me showed these items, under average operations, to cost at least the sums shown, respectively, for the year 1919,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented as was also the first five months of 1920, and the said years of 1918 and 1919, and the said

period of 1920 are improper periods upon which to base any findings as to the cost of making gas. And the master should have found that the year 1919 and the first five months of 1920 are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because said twenty months are of an era of high and excessive prices and costs for labor and material and contained two winter periods which were unusual and extreme in severe temperature, and beset with numerous transportation difficulties.

123 And the master should have found that the "present time" is an abnormal period and the rates of pay and prices of materials now in force are no criterion of cost but mere guess and surmise. The master should have taken the average cost of labor and material from 1910 to 1919, inclusive.

20. The defendants except to the finding marked "21" of the master's report which finds that:

"During the year 1918, under the prices of materials and labor at that time in force, the reasonable and actual cost of water-gas manufacture in the complainant's plant was 55.38 cents per thousand cubic feet of gas made. During 1919, it was 83.45 cents per thousand cubic feet of gas made. Under the present prices paid for generator and boiler coal and for gas oil, the cost of water-gas manufacture substantially exceeds the sum above stated for 1919, and is at least 74.55 cents per thousand cubic feet of gas made,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the period taken by him in said 21st finding was an abnormal, unusual and unprecedented time and was not a proper period to take in this case, and that, according to complainant's own records as shown by the books of the company, the cost of making gas per thousand cubic feet of gas made is as follows:

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Year.	Per M sold.
1910.....	26.56
1911.....	27.09
1912.....	26.63
1913.....	29.46
1914.....	32.26
1915.....	30.43
1916.....	34.15
1917.....	43.85

And the master should have found that during the year 1918, under the prices of materials and labor then in force, the actual cost of water-gas manufactured in complainant's plant was 55.38 cents per thousand cubic feet of gas made. And the master should have found that there is no competent evidence in the case of the actual cost

of water-gas manufactured in the complainant's plant for the year 1919 and that what will happen concerning prices for labor and materials for the balance of the year 1920, is a mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding in this case.

21. The defendants except to finding marked "22" of the master's report which finds that:

"During the year 1919, the complainant sold to its consumers 336,400,000 cubic feet of gas, an increase of 2.6 per cent over 125 1918. During the past five years the gas sales of the complainant to its consumers have increased, on the average approximately seven per cent per annum. During the year 1920, it is my judgment that, by reason of extension of mains into outlying portions of the territory the sales of the complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15 per cent."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that during the year 1920, by reason of extension of mains into outlying portions of the territory and general expansion, the sales of the complainant company would reach an increase of 28%.

22. The defendants except to finding marked "23" of the master's report which finds that:

"In the manufacture and sale of gas, a percentage of the gas made is lost, due to condensation, difference in temperature at the consumers' meters, slow meters, leaks and the like. The relative amount of gas lost through these causes tends to be greater in a suburban area where the mains are smaller, the length of mains greater in relation to consumption, and where meters are commonly located in cellars of private houses. The use of high pressure transmission also tends to increase the quantity of gas lost through condensation. I find that this so-called unaccounted-for gas, in the 126 instance of complainant company, reasonably represents approximately eleven per cent (11.03) per cent of the gas made, and that in calculating the requirements of the complainant, that percentage should be used as a basis for computation."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that defendants' exhibit (A-13) correctly and accurately shows the amount of gas unaccounted for — the years 1909 to 1919, inclusive, according to complainant's reports to the Public Service Commission, First District; and the master should have found that the amount of gas manufactured each year is the corrected "registered" make; that the corrected "registered" make is the registered make, less deductions made to cover difference in temperature of manufacture and 60 degrees, so

that in the amount manufactured allowances are made for variations in temperature and any other variation or difference is largely inefficient operation. And the master should have found that the average unaccounted for gas for the years 1909 to 1918, inclusive, is 5.74c per thousand cubic feet sold; that the unaccounted for gas for the year 1919 is 8.27c per thousand cubic feet sold; that complainant has not explained the large difference in unaccounted-for gas in the year 1919 over prior years; that a reasonable and fair cost for 127 unaccounted-for gas in the year 1919 is 23.

The defendants except to finding marked "24" of the master's report which finds that:

"24. The consumption of gas and its sale varies from time to time, depending, in large part, upon the weather and consequent factors. The low mark of gas sales is found in the warm summer months, when many consumers are absent from their homes, and the temperature eliminates the use of gas for heating, and lessens its use for cooking and lighting. The 'peak' or maximum demand is found in the winter months. The complainant company must, therefore, be prepared not alone to make sufficient gas to meet a total annual demand, but must be prepared to meet a maximum day's demand. The maximum day's send-out of the plant of the complainant company during the winter of 1919 to 1920 was 1,698,000 cubic feet of gas. The increased use of gas as a substitute for coal for heating and other domestic uses has a tendency to accentuate the maximum day's demand in relation to the annual output and thus requires a relatively larger plant capacity in relation to the average daily requirements. I find that the complainant's plant ought reasonably to have a reserve manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day), as accidents or the need for repairs say at any time take this unit out of use."

on the ground that the same is not supported by the evidence, 128 is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the complainant's plant had a reserve manufacturing capacity of over 2,300,000 cubic feet of gas in excess of the maximum day's send-out of the plant during the winter of 1919 to 1920, which was 1,698,000 cubic feet of gas; and the Master should have found that extreme cold weather and unusual conditions such as occurred in the winters of 1919 and 1920, expansion and extension of business, accidents, repairs, peak loads, additional use of gas as a fuel and other contingencies are amply provided for by the reserve manufacturing capacity equal to at least 2,300,000 cubic feet per day.

24. The defendants except to finding marked "25" of the Master's report which finds that:

"During the year 1918, the cost of water-gas manufacture in the complainant's plant was 60.65 cents per thousand cubic feet of gas sold. During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold. As of the present

time, under the cost of manufacture shown in Finding No. 21 hereinbefore, this cost is at least 84.27 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the records of the complainant company showed the corrected cost to make water-gas in 1918 not more than 55.38 cents per thousand cubic feet of gas sold; that the years 1918 and 1919 were abnormal as was also the first five months of 1920 and the said years 1918 and 1919 and the said period of 1920 were improper periods upon which to base any finding as to the cost of making gas; that the five months ending May 31, 1920, and the twelve months ending December 31, 1919, are not proper periods, under any circumstances, upon which to base a finding as to how much it costs to make gas, because the said seventeen months' period contains two winter seasons when the temperature was extremely low, the weather severe, transportation difficult and all business hazarded by unusual and unprecedented conditions making the cost enormously and excessively high; that the years 1918, 1919 and 1920 were abnormal, unusual and unprecedented and should not be used as the basis of any calculations for the cost of water-gas manufacture, but an average period should be taken, which period should be from 1910 to 1917, inclusive, and the two abnormal years 1918 and 1919 excluded entirely from consideration; and that the master erred in attempting to fix the cost of manufacture of gas as of the present time; it can only be mere guess and surmise; it can in no way bind the defendants as it is not within the province of the master to forecast.

25. The defendants except to finding marked "26" of the master's report which finds that:

"I find that the reasonable and necessary amount of taxes paid by the complainant company during the year 1919 upon property used by it in the production and distribution of gas was 7.07 cents per thousand cubic feet of gas sold. During 1918 the taxes amounted to 7.39 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented, as was also the first five months of 1920, and the said years 1918 and 1919 and the said period of 1920 are improper periods on which to base any findings as to the amount for taxes per thousand cubic feet of gas sold.

26. The defendants except to finding marked "27" of the master's report which finds that:

"There must also be added to the cost of making and distributing was, the cost of renewals and replacements of property, which 131 I find to be the sum of three cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

27. The defendants except to finding marked "28" of the Master's report which finds that:

"28. In addition to the item hereinbefore referred to, there must be included, in determining the cost of gas as delivered to the consumer, various items entering into the cost of distribution, including distribution superintendence and supplies and expenses, meter and installation work, transmission pumping, work on consumer's premises, repairs of meters, repairs of tools, repair of gas appliances, commercial expenses, salaries at the general office, supplies and expenses at the general office, legal expenses, claims and arrears expense, insurance, stable, expense automobile expense, claims for damages, real estate rents paid for property leased, stationery and printing, undistributed adjustments, uncollectible bills, interest on consumers' deposits, and relief department and pensions, and I further find that the actual and reasonable cost to the complainant company of these items during the year 1919 was not less than 27 cents per thousand cubic feet of gas sold. During 1918, the actual and reasonable cost to the complainant company of these items, including an item of 0.32 cents for defensive emergency service necessary in that year but not necessary in as great an amount in 1920 or future years, was not less than 23.97 cents per thousand cubic feet of gas sold."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should not have included in the distribution costs interest on consumers' deposits, for such item has been considered and included in the make-up of working capital. And the master should have found that the years 1918 and 1919 were abnormal, unusual and unprecedented as was also the first five months of 1920, and the said years 1918 and 1919 and the said period of 1920 are improper periods on which to base any findings as to the cost of distribution per thousand cubic feet of gas sold; and the master should have found that the item for distribution expense should be averaged over the period of 1910 to 1919, inclusive; and that the master erred in attempting to fix the cost of "distribution" of gas as of the present time, it can only be mere guess and surmise; it can in no way bind the defendants as it is not within the province of the master to forecast.

28. The defendants except to finding marked "29" of the master's report which finds that:

"The complainant derives an income from the rental of appliances, from its profit on the sale of appliances, from interest on bank balances and on consumers' final bills, and the like, which is classified as miscellaneous operating revenue. In 1918, the miscellaneous operating revenues represented 5.72 cents per thousand cubic feet of gas sold. In 1919 the miscellaneous operating revenue repre-

sented 6.75 cents per thousand cubic feet of gas sold. I find that 6.75 cents per thousand cubic feet should be credited against the cost of making and distributing gas, on account of miscellaneous operating revenue."

133 on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

29. The defendants except to finding marked "30" of the master's report which finds that:

"I find the total reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1919 was at least \$1,0880 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, \$1,0205 per thousand cubic feet."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the year 1919 was abnormal, unusual and unprecedented as was also the first five months of 1920; and that the said year 1919 and the said period of 1920 are improper periods on which to base any finding^d as to the cost of distribution per thousand cubic feet of gas sold, and the master should have found that the item for distribution expenses be averaged over the period of 1910 to 1919, inclusive.

134 30. The defendants except to the finding marked "31" of the master's report which finds that:

"I find the average selling price of gas to the complainant, in 1919, including that sold to the city of New York at 75 cents per thousand cubic feet, by reason of a statutory limitation on the rate charged for such gas, to be 99.51 cents per thousand cubic feet in 1919, leaving a net deficit to the complainant company from its gas operations in 1919 of 2.54 cents per thousand cubic feet, irrespective of any return upon any of the property used in its gas operations. As of the present time, such net deficit is substantially in excess of that sum,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that there is no evidence taking into consideration the small amount of sales of gas to the city of New York and the special conditions under which gas is supplied 135 to the city, that the complainant company does not, as of the present time, receive substantial remuneration for the gas supplied to the city of New York at the rate of seventy-five (75) cents per thousand cubic feet, as fixed by chapter 738 of the laws of 1905.

31. The defendants except to finding marked "32" of the master's report which finds that:

"The plant, machinery and equipment used in the gas business of the complainant company have been and are maintained in ex-

cellent operating condition; proper repairs, renewals and replacements have been made as and when needed, and the same are now in as high a state of efficiency as if new."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the master should have found that the cost of repairs for the year 1919 was thirteen (13) cents per thousand cubic feet of gas sold as against six (6) cents for the previous year and that this large increase is not accounted for in the increased sum for labor and materials in said year 1919; and the master should have found that the plant is not new, and even if held to be in excellent operating condition, that the property is subject to depreciation.

136 And the master should have found that the plant, machinery and equipment were subject to depreciation as shown by the expenditures of more money in the first five months of 1920, than that which complainant's witness Miller testified would make all the property practically new; that there is no evidence as to the efficiency of operation; the master's declaration is mere guess and surmise.

32. The defendants except to finding marked "33" of the master's report which finds that:

"I find that the complainant company was, on January 1, 1920, and now is, entitled to include in the amount upon which it was and is entitled to a fair return, the sum of \$135,000, for working capital."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it, and on the further ground that the amount used by the master for working and construction capital is an arbitrary one selected by him; whereas, he should have found that the complainant is entitled to include in the amount upon which it is entitled to a fair return as working and construction capital only the sum of \$80,000

for the year 1919, and that defendants' Exhibit A-112 correctly and accurately indicates the amount of working and construction capital for 1904 to 1919, inclusive, upon which complainant is entitled to a fair return.

33. The defendants except to finding marked "34" of the Master's report which finds that:

"34. The tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, I find to have actually cost, prior to August 1, 1904, and to have been reasonably worth at the time of such acquisition by the complainant, at least the sum of \$670,488.86, exclusive of working capital. There has since been erected, installed or acquired by the complainant and added to its property, and there was in use in its gas business on January 1, 1920, certain additional

land, plant, apparatus, mains and other property, of which the actual cost to the complainant company, less withdrawals since August 1, 1904, and exclusive of working capital, was and is no less than \$850,389.08, making the total cost of such property owned and used by the complainant company, as of January 1, 1920, and the present time, at least the sum of \$1,520,877.94. Adding to this the sum of \$135,000, which I deem a reasonable allowance for necessary working capital, produces an aggregate of \$1,655,877.94 as the sum representing the complainant company's total investment in the property used and useful in its gas business on January 1, 1920, its present investment being slightly in excess of that figure. In my opinion, the fair value of the property used and needed in the manufacture and distribution of the gas sold by the complainant company, as of January 1, 1920, and the present time was and is at least the sum of \$1,655,877.94, and the complainant company was and is constitutionally entitled to have its rate such as to yield a fair

return upon at least that sum. For reasons set forth in my
138 opinion herewith submitted, I have made no deduction from
the above-stated amount on account of so-called 'accrued de-
preciation', theoretical or otherwise."

on the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it; and the Master should have found that there is no proof whatsoever in the record as to the cost, if any, or value of the respective "franchises" acquired by merger or from predecessor companies and claimed to be owned by the complainant; and the Master should have found that there is no proof whatsoever showing the amount paid, if any, to municipal authorities for the "franchises" claimed to be owned by it; and the Master should have found that there is no proof whatsoever in the record as to the cost, if any, or value of any intangible gas capital acquired by merger or from predecessor companies; and the Master should have found that an allowance out of earnings for 1919 and each previous year should have been made to cover depreciation in the amount of at least five (5) cents per thousand cubic feet of gas sold, as had been the practice of the complainant in previous years; and the Master should have found that the tangible property, including plant and distributing system, acquired by complainant at the time of merger July 18, 1904, and still owned and used by it on January 1, 1920, reasonably cost, without any depreciation, not more than \$280,108, and the Master

should have found that since August 1, 1904, there has been
139 erected, installed or acquired by the complainant, and there
was in use in its gas business on January 1, 1920, certain
additional land, plant, apparatus, mains and other property of
which the actual cost to the complainant company, less withdrawal
since August 1, 1904, and exclusive of working and construction
capital, was and is not more than \$829,480.22; and the Master
should have found the sum of \$80,000 as a reasonable allowance for
working and construction capital and that for interest and taxes
during construction there should be allowed as of December 31,

1919, and as of the present time, the sum of six thousand (\$6,000) dollars; and the Master should have found that the item of "engineering and superintendency" was included by complainant in the cost of the "tangible" property; and the Master should have found that on the basis of organization, legal, general and preliminary expenses prior to August 1, 1904, and on the basis of what the books themselves show for expenses incurred since that time, there should be allowed as of December 31, 1919, and as of the present time for organization, legal, general and preliminary expenses the sum of ten thousand (\$10,000) dollars, which, together with the reasonable worth of all other intangible and tangible property (\$843,530) produces an aggregate of \$939,530 as the sum representing the complainant company's total investment in the property used and useful

in its gas business on January 1, 1920; and the Master should
140 have found that the fair value of the property used and needed in the manufacture and distribution of the gas sold by complainant company as of January 1, 1920, and at the present time was and is not more than the sum of \$939,530; and the Master erred in stating that the reasonable worth of the tangible and intangible property acquired by merger and predecessor companies was \$670,488.86, as said amount includes alleged "intangible" gas capital, which the Master himself admits in Finding No. 38 was unascertained; and the Master erred in not allowing depreciation which has been uniformly accepted by the courts and public service bodies.

34. The defendants except to finding marked "35" of the Master's report which finds that:

"35. I find that \$5.00 per thousand cubic feet of gas sold fairly represents the actual and necessary investment in property used and needed for the manufacture, transmission and distribution of gas under the conditions such as those under which the complainant company carries on its gas operations, and such investment may, for the purposes of this case, be taken to be at least that sum."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

35. The defendants except to finding marked "36" of the Master's report which finds that:

"36. Upon the trial before me, no claim was made by any of the defendants that any of the property owned or used by
141 the complainant company was not and is not used and useful in its gas business."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

36. The defendants except to finding marked "37" of the Master's report which finds that:

"37. Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flushing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of \$600,000, and its first mortgage bonds of the par value of \$650,000, making in all \$1,250,000."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no proof whatsoever as to what property, if any, was paid by the complainant company in its stock issue of \$600,000 and its First Mortgage Bonds of the par value of \$650,000, and the Master should have found that the directors and officers of the Newtown & Flushing Gas Company and the New York & Queens Gas Company, complainant herein, prior to and at the time of the merger were the same; and the Master should have found that all the property acquired at the time of the merger on July 18, 1904, by the complainant company from its predecessors, concerning which proof was offered had with-
142 out depreciation cost originally the sum of \$280,108; and the Master should have found that at the time of the merger of the complainant into and with the Newtown & Flushing Gas Company, complainant itself owned or held no cash or property whatsoever; and the Master should have found that the complainant has offered no proof as to the cost or value, if any, of the intangible property or rights claimed to have been acquired by the merger into and with the Newtown & Flushing Gas Company; and the Master should have found that the complainant failed and refused to produce witnesses now living who were officers and familiar with the operations of the predecessor companies, who could have testified and given evidence as to the actual cost or value, if any, of the property and rights now used by the complainant company, but acquired from its predecessors through merger, or otherwise, into and with the Newtown & Flushing Gas Company.

37. The defendants except to finding marked "38" of the Master's report which finds that:

"38. The actual cost, when acquired, of the property now used by the complainant company but acquired by some predecessor company in earlier years, cannot be ascertained."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it; whereas the Master should have found that the complainant failed
143 and refused to produce witnesses now living who were officers and familiar with the operations of the predecessor companies

to testify as to the cost or value, if any, of the property and rights acquired by merger or otherwise from predecessor companies; and the Master erred in failing to allow the defendants to introduce documentary proof in reports made to public boards and commissions as to the extent of the property and rights acquired from predecessor companies and the cost or value, if any, thereof.

38. The defendants except to finding marked "39" of the Master's report which finds that:

"39. I find that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1, 1920, was and is at least \$45,153.90."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

39. The defendants except to finding marked "40" of the Master's report which finds that:

"40. I find that, exclusive of the working capital and the undistributable structural costs hereinafter referred to, the cost to reproduce the plant, distributing system and other tangible property of the complainant company as of January 1, 1920, or as of the present time, was and is, without any deduction for depreciation, at least the sum of \$2,100,774.90, made up as follows:

(a) Building and apparatus	\$505,960.00
(b) Street Mains	1,071,139.00
144 (c) Services	175,563.00
(d) Meters	174,163.00
(e) Gas appliances	85,427.00
(f) Arc lamps	3,173.00
(g) Tools and Implements	1,002.00
(h) Laboratory equipment	2,449.00
(i) Office furniture and fixtures	6,023.00
(j) Stable equipment	5,424.00
(k) Omissions and contingencies	25,298.00
(l) Land	45,153.90

In the foregoing, I have not included any allowance for organization and development expenses prior to construction; the cost of financing; interest during construction; engineering, superintendence and general contractor's expense and profit; taxes on land during construction; administrative, legal and miscellaneous expenses during construction; or for so-called 'going value.' Unquestionably, in the reproduction of a plant distributing system and gas enterprise of this character, as of the present time, items of expenses would necessarily be incurred along the lines indicated by these items, all except 'going value' being comprised within the category of what is commonly called 'undistributable structural costs.' Under the circumstances of my determination of this case, however, I have not felt called upon to determine and allow definite amounts to cover these additional elements of reproduction cost and expense."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

145 40. The defendants except to finding marked "41" of the Master's report which finds that:

"41. With respect to the tangible property owned and used by the complainant as of January 1, 1920, and included in the above finding as to the cost to reproduce the said property, the complainant submitted to the defendants, in advance of the trial before me, a detailed inventory of items, units, and quantities, with brief descriptions of such property and a statement of the unit prices or costs applied to each such unit, to reach the above-stated cost to reproduce the property. Such inventory was checked up by the engineers of the defendants, at least to the extent desired by them, and upon the trial no testimony was given challenging any item or quantity shown in such inventory or any unit price applied therein."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

41. The defendants except to finding marked "42" of the Master's report which finds that:

"42. Using the unit prices of labor and materials prevailing as of January 1, 1914, the cost to reproduce the tangible property of the complainant company itemized in Finding No. 40 hereinbefore, would be about one-half of the above-stated cost to reproduce the same as of January 1, 1920, to which, of course, in order to reach and state a figure reflecting all elements of reproduction cost, there would have to be computed, on a similar basis, and added, amounts covering the other items referred to in Finding No. 40."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no proof whatsoever in the record as to the unit prices of labor and materials prevailing as of January 1, 1914 so that this finding should be entirely stricken out; and the Master should have found that the books of the complainant company when properly proven are some proof of the cost and reproduction value of the tangible property and other elements of value referred to in Finding No. 40 on January 1, 1914 and January 1, 1920.

42. The defendants except to finding marked "43" of the Master's report which finds that:

"During the twelve months ended December 31, 1918, the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, and during all and each of the periods so indicated the operating revenues of the complainant company were not sufficient to pay the reasonable and necessary costs of the manufacture, transmission and distribution of gas, and to provide a reasonable return upon the value of the property owned and used by the complainant in the manufacture, transmission and distribution of the gas sold by it to its consumers. During the twelve months ended December 31, 1919, and during the portion of 1920 covered by the proofs before me, the said net operating revenue did not and does not as of the present time, provide any return whatever upon

the said fair present value of any of the property so owned and used by the complainant company as hereinbefore found."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the total operating revenue of the complainant company under the \$1.00 statutory rate was as follows:

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1910,.....	\$182,788.27	1915,.....	\$249,313.22
1911,.....	188,895.77	1916,.....	265,567.33
1912,.....	214,863.07	1917,.....	303,457.03
1913,.....	324,851.07	1918,.....	344,238.59
1914,.....	247,175.00	1919,.....	356,919.75

And the Master should have found that the operating income of the company as shown by the books for the years 1909 to 1919, inclusive, is as follows:

1909,.....	\$59,310.88	1914,.....	\$62,475.00
1910,.....	66,537.04	1915,.....	76,467.96
1911,.....	60,163.14	1916,.....	50,864.26
1912,.....	70,187.66	1917,.....	53,736.70
1913,.....	64,385.62	1918,.....	33,350.56

And the Master should have found, that the repair account for the year following figured on the basis of per 1,000 cubic feet of gas sold is:

1915,.....	6.56 cents
1916,.....	5.69 "
1917,.....	6.61 "
1918,.....	7.33 "
1919,.....	13.51 "

and that there has been no explanation offered by complainant of the increased cost of repairs in 1919.

And the Master should have found that using the average cost of repairs of previous years in the year 1919, and deducting the expenses (\$15,518.73) of the rate case eliminated and the items "defensive emergency service" (\$747.46), "interest on insurance" (\$57.58), "increase in fire insurance" (\$477.30), interest on unpaid taxes (\$233.71), and federal income tax" (\$443.25) from the operations of 1919, there would be an operating profit for the year 1919 of at least \$12,617.36; and the Master should have found that the volume of business is increasing more rapidly than the plant invest-

ment, and that such carrying charges as interest, taxes, insurance, depreciation and the like have in consequence decreased; that the operations of 1920, for the five months charged with the excessive repair items and the abnormal costs of

material and labor are in no way a criterion of what the actual operations of the company will be when the year's business ends on December 31, 1920, but rather that net operating revenue of the company should be taken over a period of at least ten (10) years to ascertain a fair return upon the present value of the property owned and used in the gas business by the complainant company.

And the Master should have found that the complainant has failed to prove that the increase in business will not sufficiently overcome abnormal conditions of operation in 1919 and 1920.

43. The defendants except to finding marked "44" of the Master's report which finds that:

"44. On the basis of any findings of a net deficit from operations in 1919 of 2.54 cents per thousand cubic feet of gas sold, I find that the operating revenues of the gas business of the complainant company, during the year 1919 were not even sufficient to pay the reasonable and necessary costs of the manufacture and distribution of gas; and that in addition to being deprived of any return whatsoever upon the fair and reasonable value of its property devoted to the gas business, the complainant gas company actually suffered a loss from its gas operations in 1919 of 2.54 cents per thousand cubic feet of gas sold and is suffering a loss at a still greater rate in 1920."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that using the average cost of repairs of previous years in the year 1919 and deducting the expense (\$15,518.73) of the rate case eliminated and the items "defensive emergency service" (\$747.46); interest on insurance (\$57.58); increase in fire insurance (\$477.30); interest on unpaid taxes (\$233.71) and federal income taxes (\$443.25) from the operations of 1919, there would be an operating profit for the year 1919 of at least \$12,817.36; and the Master should have found that the volume of business is increasing more rapidly than the plant investment, and that such carrying charges as interest, taxes, insurance, depreciation and the like have in consequence decreased; that the operations of 1920, for the five months charged with the excessive repair items and the abnormal costs of material and labor are in no way a criterion of what the actual operations of the company will be when the year's business ends on December 31, 1920, but rather that net operating revenue of the company should be taken over a period of years of at least ten (10) years to indicate a fair return upon the present value of the property owned and used in the gas business by the complainant company.

And the Master should have found that the complainant has failed to prove that the increase of business will not sufficiently overcome abnormal conditions of operation in 1919 and 1920.

44. The defendants except to finding marked "45" of the Master's Report which finds that:

150 "45. The reasonable and proper rate of return upon the capital invested in the plant, distribution system, properties and business of the complainant company, I find to be not less than eight per cent. per annum, amounting to \$132,470.24, calculated upon the fair value of the property used and needed, as hereinbefore found. At no time during 1919 or thus far in 1920 has the complainant company earned any part of such a return,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the reasonable and proper rate of return upon the capital invested is not more than 3% per annum (3%) during said abnormal period, calculated upon a fair value of the property used and needed as heretofore found, and the Master should have found that the year 1919 and the period of five months ending May 31, 1920, were abnormal periods of time and should not be considered in fixing a basis for a reasonable and proper rate of return, but rather than an average period of time should be taken for the years 1910 to 1919, inclusive; and that over such period of time the complainant has earned more than 6% on the capital actually invested (irrespective of stocks and bonds issued) in the plant, distributing system, property and business of the complainant company. And the Master should have found that the year 1919 and the five months of 1920 were abnormal, unusual and unprecedented and establish no fair criterion of the cost of making and distributing gas in the city of New York and elsewhere.

45. The defendants except to the finding marked "46" of the Master's report which finds:

51 "As of May, 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24 per cent. over the average rate per hour for all of 1919; the increase in the shop department has been 20 per cent., and the office employees 10 per cent. The average increase in the prices paid for materials other than coal and oil, from 1919 to May, 1920, has been 10 per cent."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that there is no competent evidence in the case of what the price of labor or cost of material will for the full year of 1920, and what will happen concerning prices of labor and material in the future is mere guess and surmise and cannot be forecast by anybody and is not properly the subject of a finding in this case.

46. The defendants except to finding marked "47" of the Master's report which finds that:

47. Since 1914 the complainant company has paid no dividends on any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds. During 1919

and 1920, it has necessarily borrowed money also to enable it to meet in full its current bills for coal, oil and materials."

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the complainant failed to prove that the stock and bonds are duly authorized, and that the stock at no time represented property or capital actually invested and that the bonds issued and outstanding only within recent years have actually represented the property or capital invested; and that for the entire period from August 1, 1904, to December 31, 1919, the stock, and for a long period of time the bonds, represented assumed or inflated values of and on property that did not actually exist; and the Master should have found that if the company had been economically and efficiently managed its properties in the year 1919 and caused no excessive and unnecessary expenditures to be made the interest on the bonds would have been paid without borrowed money; and that for the year 1920 it is presumptuous to say at this time that the interest on the bonds will not be paid for the complainant's own witness Secretary Speer, indicated an enormous growth in volume of business for the year 1920.

47. The defendants except to finding marked "48" of the Master's report which finds that:

"48. During the twelve months ended December 31, 1919, the revenues and expenses of the gas business of the complainant were as follows:

	Revenues.	
Sales of Gas.....	\$334,614.83	
Miscellaneous Operating Revenues:		
Rents from Gas Appliances.....	13,839.53	
Gross profits from Sales of Gas Appliances.....	8,465.39	
Interest on bank balances.....	308.60	
Interest on consumers' final bills.....	5.44	
Interest on Main Contracts Deposits.....	81.10	
	<hr/>	
	\$357,314.89	
	Expenses.	
Cost of Production.....	\$241,176.84	
Cost to Distribute.....	91,331.63	
Renewals and replacements.....	10,086.41	
153 Taxes and interest thereon.....	23,794.71	
	<hr/>	
Total expenses.....	\$366,389.59	
Total revenues.....	<hr/>	
Net loss from gas business.....	9,074.70	
Deficit below a reasonable return on complainant's investment as hereinbefore found.....	<hr/>	
	\$141,544.94	

In the above-stated finding of the revenues and expenses of the complainant company, I have eliminated, as not properly to be included for the purposes of my present inquiry whether the maximum rate prescribed by statute has been, is, and will continue for a period of indefinite duration to be, confiscatory, the company's outlays in 1919 for "defensive emergency service," amounting to \$747.46, and for the expenses charged in that year on account of the present suit in equity, amounting to \$15,518.73,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

48. The defendants except to the finding marked "49" of the Master's report which finds that:

"With the approval of the defendant Public Service Commission for the First District, the Consolidated Gas Company of New York, in the year 1913, acquired and now owns all of the capital stock of the New York and Queens Gas Company (except qualifying shares). The Consolidated Gas Company of New York apparently does not own any of the bonds of the complainant company,"

on the ground that the same is not supported by the evidence, is contrary to the evidence, and has no evidence tending to support it,

rather the master should have found that consent of the
154 Public Service Commission had been obtained as to the ownership by the Consolidated Gas Company of all of the capital stock of the New York & Queens Gas Company (except qualifying shares); and the Master should have found that there is no proof whatsoever as to the present ownership of the bonds of the complainant company.

49. The defendants except to finding marked "50" of the Master's report which finds that:

"50. I find that the complainant company has complied with the provisions of Chapter 125 of the Laws of 1906, with reference to the candle-power and with the requirements of law regarding pressure,"

on the ground that the same is not supported by the evidence, is contrary to the evidence and has no evidence tending to support it.

And the Master should have found that the complainant company has not complied with the provisions of chapter 125 of the laws of 1906 with reference to candle-power, and pressure, and that the complainant violated the statute by failure to furnish its consumers with 22 candle power gas and the extent of the violations were as follows:

Year.	No. of violations.
1919	94
1918	130
1917	132
1916	145

and that in the years 1919 and 1920 the flagrant violations of such law as to candle power and pressure were:

	Date.	No. of violations. Candle-power.
	1919.	
155	Jan. 20.....	18.54
	Jan. 22.....	18.88
	" 23.....	18.52
	Feb. 3.....	19.08
	March 24.....	16.20
	April 26.....	19.26
	July 9.....	18.08
	Sept. 19.....	19.41
	" 24.....	18.70
	Dec. 4.....	19.38
	" 5.....	19.59
	" 19.....	19.09
	1920.	
	Jan. 15.....	19.05
	Feb. 2.....	19.14
	" 17.....	19.07
	" 28.....	17.24

and the Master erred in refusing to allow defendants to offer any evidence of the failure of complainant to furnish its customers with 22 candle power gas prior to the year 1919.

50. And the defendants except to the finding marked "51" of the master's report, which finds that:

"Various matters comprised within the issues referred to me by the order of May 23d, 1919, I have discussed in greater detail in a separate opinion which is herewith submitted and made a part of this report. It is my intention that the facts and the conclusions regarding the law, set forth for reasons of convenience in that separate document, shall be deemed a part hereof, with the same force and effect as though they had been physically incorporated in this report,"

And the defendants hereby except in detail to all of the statements of fact set forth by the master in his so-called separate opinion, and to the conclusions of law regarding the law set forth in his so-called separate opinion, the same as if defendants specifically except to each and every one, and also defendants request this court to return the report to another Master in order that defendants 157 may have the facts found separately stated or this court make new findings in accordance with the order appointing a Special Master.

51. The defendants except to the finding marked "52" of the Master's report, whether the same be treated as a finding of fact or

a conclusion of law, on the ground that the same is not supported by the evidence, is contrary to evidence and there is no evidence tending to support it.

The defendants further except to the opinion of the special master accompanying his findings herein in the following particulars, to wit:

52. The defendants except to so much of the master's opinion which finds that

"the complainant company presented to me, as previously to the accountants and experts of the defendants, all of its invoices and vouchers for coal, oil and other materials and supplies purchased, together with its various payrolls, works reports, records of manufacture, office reports, and the like, together with its books of account in which the items of expenditure and revenue shown by these underlying records had been entered. All of this data covered the year 1919 and the first five months of the year 1920. To the invoices for coal, oil and other materials, were attached the certificates evidencing the receipt of the quantities indicated, and to the oil invoices were also attached the certificates of the New York Produce Exchange inspectors attesting the quantity and quality of the oil delivered.

* * * * *

158 There was also submitted to me the sworn testimony of qualified witnesses as to the actual cost of oil, coal and other materials from 1906 down to the present time, including the years 1919 and 1920, and the sworn testimony of experienced operating engineers as to the quantities of coal, oil and other materials, and of the labor, actually required for the manufacture of gas and the wages necessarily paid to labor during this period, including 1919 and the first five months of 1920.

The defendants also offered in evidence data showing the operating results, the unit quantities of materials used, the unit costs hereof, and other information as to the revenues and expenses of the complainant company during the years from 1906 to 1920. Various of the underlying records of 1918 and prior years were also introduced in Court at the instance of the defendants, and various of the entries in the books of the complainant and its predecessor company were placed in evidence by the defendants."

on the ground that the same is not supported by the evidence and contrary to the evidence.

53. The defendants except to so much of the master's opinion which finds:

the vice-president and operating manager of the complainant, Mr. [redacted], stated on one of the closing days of the trial that in his judgment the sales of the complainant company during 1920 will be about 15 per cent in excess of the sales during 1919. In my opinion,

a finding to this effect is justified and required by all the evidence, although counsel for the complainant points out that from 1918 to 1919 the increase in sales was only 2.6 per cent and that the average increase during the past five years has been only 7.02 per cent * * * the company's present office force is small and is compelled to work on an overtime basis to look after the present volume of sales, and additional staff may be required for increased sales; but as fairly as I can figure it, increased sales of fifteen per cent over 1919 would ordinarily make a difference of about four cents per thousand cubic feet, in the distributing cost of the gas sold by the complainant. Any such saving in the unit expenses of the general office and commercial departments will, however, be at least absorbed by the increased cost of gas manufacture and the increased cost of the labor and material entering into the work of distribution, so that the net effect on the unit distribution costs as they now appear for 1920 will be that, despite the prospective increase in sales, the gas as delivered to the consumer, including the commercial expenses, does and will cost considerably more per thousand cubic feet than in 1919 or early 1920."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

54. The defendants except to so much of the master's opinion which finds that:

160 "The books of account, vouchers, manufacturing records, works reports, and the like, of the complainant company were placed at the disposal of the defendants, more than six months in advance of the beginning of the trial before me, along with copies of the principal statistical exhibits which the complainant proposed to offer in evidence upon the trial, and were carefully and thoroughly examined and analyzed by counsel for the defendants, their accountants and engineers. These operating records show that in the year 1919 the actual cost of the gas made at the complainant's works was 63.45 cents per thousand cubic feet of gas made, and that the loss in volume based upon the quantity of gas metered at the consumers' premises, to which I shall presently refer in discussion of this so-called 'unaccounted for gas,' was 11.03 per cent of the gas made. On that basis, the complainant's actual cost of making gas in the year 1919 was 71.73 cents per thousand cubic feet of gas sold. The actual distribution expenses, including the commercial expenses (and including also an item of 0.22 cents for defensive emergency service still required in 1919 and 4.62 cents on account of the expenses of the present suit in equity, totalling 4.81 cents, both of which items it is my judgment that I ought to disregard for the purposes of my present inquiry, for reasons hereinafter indicated), aggregated 32 cents per thousand cubic feet sold; renewals and replacements three cents per thousand cubic feet sold; taxe and interest thereon 7.07 cents per thousand cubic feet sold, making a total actual cost of \$1,1380 per thousand cubic feet of gas sold. The complainant's income from the sale of gas in 1919, ac-

ording to these same books and records, was 99.51 cents per thousand cubic feet, showing a deficiency below actual cost of 14.29 cents per thousand cubic feet of gas sold. As against this deficiency, however, the complainant company credits the account with the profit made on its sale of gas appliances, the moneys received as rental of such appliances, and certain interest items, aggregating 6.75 cents per thousand cubic feet of gas sold, leaving a net deficiency during the year 1919 of 7.54 cents per thousand cubic feet of gas sold, or in money, the sum of \$25,340.89."

61 on the ground that the same is not supported by the evidence and is contrary to the evidence.

55. The defendants except to so much of the master's opinion which finds that:

"The first question to determine is whether the quantities used by the complainant company as they appear from the books and records of the company are correct and seem or are a reasonable and necessary use of materials and of labor, or whether there has been a waste of gas-making and unnecessary use of labor forces and the books do not accurately reflect the quantities actually needed and used. I have analyzed these figures in the light of the defendants' proofs and also of the sworn testimony given by Mr. Woods, an operating engineer of wide experience produced by the complainant company, whose testimony has not been directly attacked or contradicted by my witness. Except for some minor variances when contrasted with the 1919 operating results, such as his estimate of 'unaccounted-for' gas at 10 per cent (the record for 1919 shows 11.03 per cent), his slight underestimate of the required boiler fuel, and the slight difference as to the figures given by him for the gas oil required, it may be said that the results shown in the operating records closely accord with the sworn expert opinion of Mr. Woods, and are confirmed by his judgment as to the results which might reasonably be looked for and secured."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

62 56. The defendants except to so much of the master's opinion which finds that:

"Whereas the operating records showed an actual unaccounted-for in 1919 of 11.03 per cent, which seems to me a reasonable figure, having in mind all present conditions. On the whole, I am convinced that the operating records of the complainant company have been honestly and accurately kept, and accurately reflect actual, efficient, and reasonable operating results. In arriving at a conclusion, therefore, in this case, I have accepted the actual operating results for the year 1919 as they appear from the books of the complainant company, showing the cost of manufacture to be 63.45 cents per thousand cubic feet of gas made."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

57. The defendants except to so much of the master's opinion which finds that:

163. I am unable to make such a finding because there is ample evidence in the case indicating that it is practically impossible to regulate the amount of "unaccounted-for" gas and that factors were operative in 1919 which tended to increase the percentage. Weather and other conditions affect the gas in such manner and form that it is impossible to say that "unaccounted-for" gas should be kept below a certain percentage. Some years it seems to run very high, and in other years it seems to run quite low. This variance is caused by a number of changing conditions. I feel that I am compelled, in considering the operating results of the complainant company, to accept the actual conditions as I find them during the year 1919, and to accept the "unaccounted-for" gas at the figure of 11.03 per cent, which was the exact amount of such loss in volume during that year. In this connection, of course, it should be borne in mind that in 1920 or in some subsequent year this percentage may be lessened, so that the actual cost of making the gas in such year, if based upon the rates of pay for labor and the prices of materials prevailing in 1919, might be somewhat less than the figures now shown for 1919. But here again it should be noted that although there may be a reduction in the percentage of "unaccounted-for" gas, whatever reduction may take place from such a cause will be more than absorbed and offset by the increased cost of materials and of labor. Upon the basis of 11.03 per cent of "unaccounted-for" gas, the complainant's actual cost of manufacture during the year 1919 was 71.73 cents per thousand cubic feet of gas sold.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

58. The defendants except to so much of the master's opinion which finds that:

164. "The defendants challenge only four of the items included in this general item of "distribution and other expenses". They ask me to strike out from the 1919 outlays the item of \$747.46 for "defensive emergency service"; the item of \$15,518.73 representing the charges made in 1919 on account of the expenses of the present rate suit; interest on insurance, amounting to \$57.58; and increased fire insurance, \$477.30. I cannot agree with counsel for the defendants in their claim that I ought to eliminate the items "interest on insurance, \$57.58" and the item "increase in fire insurance, \$477.30".

on the ground that the same is not supported by the evidence and is contrary to the evidence.

59. The defendants except to so much of the master's opinion which finds that:

I limit my statement as I have with respect to these two items last mentioned because I agree with counsel for the complainant that in establishing a new rate an allowance must be made for the necessary expense to which the complainant company has been put in establishing its right to charge an adequate and remunerative rate for the gas sold by it, despite the existing statutory limitation, which I herein find to be confiscatory. I draw a distinction between analyzing the usual and necessary operating expenses of the company for the purpose of determining whether, in the first instance, the maximum rate fixed by statute is confiscatory, and the analysis of the complainant's expenses which must be made in fixing the fair rate for the future. The latter, of course, must make provision for the complainant's reimbursement for the expense of freeing itself from a statute which the complainant has proved to be confiscatory. That, however, remains to be considered in the fixation of a new rate.

165 The two items which I have thus stricken out for the purposes of the present inquiry aggregate \$16,266.19. The total amount of actual distribution expense for 1919 was \$107,597.82. Deducting \$16,266.19 from \$107,597.82, gives \$91,331.63; this divided by 336,000,000 cubic feet sold in 1919 makes the allowable distribution expense approximately 27 cents instead of 32 cents as shown on the books of the complainant company.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

60. The defendants except to so much of the opinion of the master which finds that:

The item of the cost of providing for the renewal and replacement of property withdrawn from service seems to be agreed upon by all parties at three cents per thousand cubic feet of gas sold. As to the taxes and interest thereon, amounting to \$23,794.71, or 7.07 cents per thousand sold, the defendants ask me to eliminate the interest on unpaid taxes, amounting to \$233.71, and the Federal income tax item of \$443.25. I doubt whether these items, particularly the latter, should be included in the cost of taxes to the complainant company, but if I should eliminate either or both of them, it would make no substantial change in the tax figure, so that in arriving at my figures, I have taken the tax item as 7.07 cents per thousand cubic feet of gas sold.

166 on the ground that the same is not supported by the evidence and is contrary to the evidence.

61. The defendants except to so much of the master's opinion which finds that:

"There appears to be no dispute that the income from sales of gas amounted to 99.51 cents, nor does there appear to be any dispute as to the amount of credit for miscellaneous operating revenue, viz., 6.75 cents per thousand cubic feet of gas sold. I have reached the

conclusion, therefore, that the actual cost of making and distributing gas during the year 1919, including taxes and the renewal and replacement of property, was \$1,0880, against which there is to be credited 6.75 cents, leaving a net cost of \$1,0205, or a deficiency over the sum realized from gas sales (99.51 cents) of 2.54 cents per thousand cubic feet of gas sold. This sum, multiplied by 336,241,100 cubic feet of gas sold during the year 1919, gives \$8,540.53 as the actual deficiency in operating expenses for the year 1919, without regard to any return upon any of the complainant's investment in the property used in its gas business. These figures show a confiscation of the complainant's property in 1919 and a confiscation thereof to an even greater extent thus far in 1920, and there might appear to be no necessity for my going further and ascertaining the present fair value of the property upon which the complainant was and is entitled to earn a reasonable return."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

167. 62. The defendants except to so much of the master's opinion which finds that:

"The securities issued by the complainant for this purpose cannot, it seems to me from the present record, be considered to have been worth more than the property thereby acquired."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

63. The defendants except to so much of the master's opinion which finds that:

"Fortunately, there has been agreement between the parties upon this record as to the cost, up to and as of August 1, 1904, of the tangible properties still in existence and use, which were acquired by the complainant company on that date. The complainant and the defendants agree that the tangible property acquired on August 1, 1904, and still in existence and use, did cost, and as of that date was reasonably worth, at least, \$280,108, and I accept that figure in arriving at the complainant's total investment and the present value of its property. Since that date, the net additions to the plant and property of the complainant have cost \$850,389.08, and there is no dispute as to this item. These two items not in controversy cover the actual cost of the tangible property now in use, aggregating \$1,130,497.08."

168. on the ground that the same is not supported by the evidence and is contrary to the evidence.

64. The defendants except to so much of the master's opinion which finds that:

"The \$650,000 of bonds originally issued by the complainant company upon the purchase of the securities of the Newtown and

Flushing Company are probably now in the hands of persons who at that time had no connection with the Newtown and Flushing Company. * * *

"As I have already pointed out, one difficulty here is that I have not before me the satisfactory basis for a finding that the securities issued by the complainant company were worth any more than the book value of the tangible and intangible property acquired, or that under the circumstances already referred to, such property, at the time it was acquired, had cost or was worth more than was shown by the books of the company from which it was acquired."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

65. The defendants except to so much of the master's report which finds that:

"At the time of the merger of the Newtown and Flushing Gas Company into the New York and Queens Gas Company, the total property and assets of the former (exclusive of working capital) were carried on the books of the former at \$694,678.00. Since that time, plant and equipment so acquired by the complainant on August 1, 1904, has been retired, at a book cost totalling \$24,189.14. The tangible property acquired on August 1, 1904, and still in service, is agreed to have cost before August 1, 1904, and to have been worth on that date, the sum of \$280,108 exclusive of franchises and rights and 'going value' and the undistributed structural items under consideration. The deduction of these two items from the book total of \$694,678.00 leaves only \$390,-380.86 as representing the book cost to the Newtown and Flushing Gas Company of the franchises and rights, the 'going value,' and the undistributable structural items hereinbefore mentioned. There is sufficient evidence to warrant my conclusion upon the present record that the item of 'franchises, good will, etc.,' on the books of the complainant and its predecessors, covered, among other things, preliminary and development expenses and the various other items which Mr. Miller puts in at a total of \$320,350, and also the cost of franchises and rights,' which Mr. Miller puts in at \$500,000; and I think it will be fair for me to say, for the purposes of the present case, that for all of these items just referred to, the New York and Queens Gas Company actually paid no more than their book cost to the Newtown and Flushing Gas Company and its predecessors, viz: \$390,380.86, and that these elements had cost the Newtown and Flushing Gas Company and its predecessors, and were worth, on August 1, 1904, at least that sum."

on the ground that the same is not supported by the evidence and is contrary to the evidence.

66. The defendants except to so much of the master's opinion which finds that:

"To the cost of the present property acquired in 1904 and the net additions to such property since 1904, totalling \$1,520,877.94, there must be added an item for materials and supplies, cash on hand and in banks, and the like, commonly called working capital."

170 * * * I have reached the conclusion that \$135,000 would be a fair sum to be allowed for working capital. I therefore reach the conclusion that the tangible and intangible property, including working capital, used and useful during the year 1919 and as of January 1st, 1920, by the complainant company in the conduct of its gas business, represents an actual investment, and is reasonably and fairly worth at this time, at least the sum of \$1,655,877.94, and that it is on at least this amount that the complainant company was and is entitled to have its rate such as to yield a fair return.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

67. The defendants except to so much of the master's report which finds that:

In view of some statements made by me on the record with reference to the value of land and my statement that I would fix the value of land at about \$44,000, I should add that upon analyzing the figures I found that land acquired prior to August 1st, 1904, is included in the agreed item of \$280,108 at \$19,423, plus grading and filling, \$5,000, making \$24,423 for land unimproved and that additions to real estate since 1904 have cost the complainant \$20,630.90, a total of a little more than \$45,153.90.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

171 68. The defendants except to so much of the master's opinion which finds that:

Statements made by me on the record indicate my views as to the claim made by counsel for the defendants that the complainant company was not entitled to equitable relief because of its alleged failure to comply with the statutory requirements as to candle power, and I therefore deem it unnecessary to say anything further herein upon that subject, which I discussed at considerable length in my opinion as Special Master in the Consolidated Gas Company case. In view of the similarity of the record facts, I refer to that opinion for a fuller statement of my views upon the subject. I am clear that this complainant has complied with the candle-power provisions of the statute.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

69. The defendants except to so much of the master's opinion which finds that:

In my opinion the property now used by the complainant company is worth at least that sum.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

70. The defendants except to so much of the master's report which finds that:

172 The complainant company offered testimony as to the present reproduction cost of the tangible property of the complainant company. The proof was undisputed that the complainant owns and uses the items of tangible property which it inventoried as of January 1, 1920, and that, exclusive of working capital and the undistributable structural costs, the cost of reproducing the tangible property, as of January 1, 1920, would be at least \$2,099,621, as compared with the complainant's actual and unimpaired investment in the same tangible items of only \$1,130,497.08. In other words, leaving out working capital and the undistributable working costs, it would cost nearly twice as much to reproduce the tangible property today as it did actually cost the complainant and its predecessors.

Of course, to this figure of \$2,099,621, to reach a complete figure of present reproduction cost, there must be added amounts, based on the present cost of such items, for organization and development expenses prior to construction; cost of financing; engineering, superintendence and general contractors' expense and profit; interest during construction; taxes on land during construction; the cost of franchises and rights; administrative, legal and miscellaneous expenses during construction; certainly the sum of \$135,000 for working capital; and perhaps also a suitable amount for "going value." The above-stated investment figure of \$1,130,497.08 likewise does not include any allowance for the cost of these items prior to August 1, 1904, although they were, of course, principally incurred before that time. In so far as these undistributed elements arise in connection with the present cost to reproduce this property, I have not thought it necessary to make a finding as to any of them, and in so far as they arise in connection with the complainant's present aggregate investment, I have declined to make any finding assigning to them a value in excess of the item representing their cost to the complainant and its predecessors, viz: \$390,380.86, in which they are included to an extent deemed adequate for the purposes of this case.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

173 71. The defendants except to so much of the master's report which finds that:

Under any basis of determining present value, the complainant's property is now worth at least the amount of such investment therein, and the sound rule of law and policy seems to require the allowance of a reasonable return upon at least that sum.

In determining that the complainant's property has a fair present

value of at least the amount of the complainant's actual investment therein as found by me, viz., at least \$1,655,877.94,

on the ground that the same is not supported by the evidence and is contrary to the evidence.

72. The defendants except to so much of the master's report which finds that:

From the testimony given upon the trial, I was strongly impressed that in respect of a very large proportion of gas property, there is no ascertainable "life expectancy." The withdrawal of such property from service comes about from inadequacy or obsolescence which cannot be forecast in terms of years or even satisfactorily guessed at. Certain parts of operating machinery and equipment are of course subject to the effects of use. The replacement of these wearing parts enters into the cost of repairs. As to the substantial units of structures, apparatus, mains, and equipment, their withdrawal from the property accounts comes about from causes not attributable to the condition of the property itself or any diminution in its operating efficiency but varying utterly with the particular plant, time, local conditions and service demands and hence capable of being forecast only as the occasion for such change in plant or equipment becomes imminent.

174 on the ground that the same is not supported by the evidence and is contrary to the evidence.

73. The defendants except to so much of the master's report which finds that:

The loss due to such supersession cannot properly be said to have accrued during the period the superseded unit was in service. It occurred when supersession took place. It became a proper charge against the economies to be realized therefrom. It furnished no basis for the imposition of an additional charge against the user of the superseded unit during the period of its useful service over and above the higher cost of operating it. Such a charge could not be justified either on the ground that the unit was losing potential life, or that the capital invested in it was being consumed, because neither is true.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

74. The defendants except to so much of the master's report which finds that:

In order to justify the deduction of "theoretical depreciation," I was asked in this case to assume that a "depreciation reserve" equal to the computed "theoretical depreciation" had been collected from the public, and then to deduct from the company's investment the amount of such assumed reserve. No such reserve had, in fact, been collected or accumulated by this company. The rate chargeable did

not permit it, and there is no reason to believe that the Legislature, in prescribing the rate, ever contemplated it. As I have set forth in Findings Nos. 32 and 27 of my Report and as I have elsewhere indicated herein, the complainant gas company has maintained its property and investment intact in the past through renewals and re-

placements, at an average actual cost of approximately three
175 cents per thousand cubic feet of gas sold, and no reason ap-
pears for believing that it cannot continue to do so on that basis. Even assuming that the statute permitted such a rate, to have imposed on the company's consumers an additional burden nearly twice as great, representing a purely theoretical item of operating cost, merely to accumulate a useless reserve to justify a drastic deduction from investment in some ultimate proceeding as to rates, could not have been justified on any sound theory in the past and cannot now be sustained as to the future.

on the ground that the same is not supported by the evidence and is contrary to the evidence.

75. The defendants except to so much of the master's report which finds that:

In order to justify the assumption that a "depreciation reserve" was or should have been collected, defendants' witness Hine testified in this case that such a reserve was necessary "so that when the property is retired for any cause whatsoever the fund can be charged with the cost of the property". He testified also that the reserve should be in his opinion "invested in the property", and that when the funds were needed for renewals and replacements they would be provided "by issuing securities against construction work which had been done originally out of this fund, for the money laid aside for this fund, just to reimburse the treasury on account of these expenditures". This view seemed to me to disregard the obvious fact that having deducted the amount of the reserve temporarily invested in property from that on which he proposed the company should be allowed to earn a return, he, to all intents and purposes, destroyed the earning power of such property and investment; that therefore he could not issue any securities against such property, there being no earnings therefrom with which to pay interest on the securities;

that the reserve could never thereafter be availed of for the
176 purpose for which it was alleged to have been created, and that it would be, in fact, as if it had never been created. Thus he not only failed to sustain his contention that a "depreciation reserve" was necessary for the purposes which he alleged, but he proposed to treat the reserve as if he himself believed it to be both unnecessary and ineffectual, except for the purpose of justifying a deduction from the complainant's investment.

It is obvious that the collection of an unnecessary reserve and its periodic deduction from the value of the property in service would operate to effect a piece-meal purchase on the part of the public, of the property used by the utility in its service. In other words, it is really asking the consumer to pay for the plant, instead of paying a

return on the investment. If such a consummation is desirable, of which there is no evidence, it should be effected openly, and not surreptitiously under the guise of providing for so-called "theoretical depreciation".

on the ground that the same is not supported by the evidence and is contrary to the evidence.

76. The defendants except to so much of the master's report which finds that:

His testimony in this respect was not contradicted by that of any witness. This sum, however, does not, in my opinion, measure any impairment in the present value of the property used and useful in the gas business. It represents merely an unmatured obligation to maintain the property in efficient operating condition out of future earnings, the expert witnesses of both the complainant and the defendants agreeing that it was and is maintained in efficient and first-class condition.

on the ground that the same is not supported by the evidence
177 and is contrary to the evidence.

Dated, August 6, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
Solicitor for Defendant Nixon.

Office & P. O. Address, Capitol, Albany, N. Y.

TERENCE FARLEY,
Solicitor for Defendant O'Leary.

Office & P. O. Address, No. 49 Lafayette St., New York City.

W. H. VAN STEENBERG,
Solicitor for Defendant O'Leary.

Office & P. O. Address, 27 Cedar St., New York City.

178 [Endorsed:] District Court of U. S. New York & Queens Gas Co., Complainant, against Charles D. Newton, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of Queens County, State of New York, and Lewis Nixon, Constituting the Public Service Commission for the First District, Defendants. E. 16-44. Exceptions to Special Master's Report and Opinion. Charles D. Newton, Attorney-General of the State of New York; Wilber W. Chambers, Solicitor for defendant Charles D. Newton, Office & P. O. Address, Capitol, Albany, N. Y.; Terence Farley, Solicitor for defendant Lewis Nixon, Office & P. O. Address, No. 49 Lafayette St., New York City.

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VIIb.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,

against

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Lewis Nixon, Constituting the Public
Service Commission for the First District, Defendants.

Notice of Filing of Exceptions.

Please take notice that the within exceptions of the complainant to the report and opinion of the Special Master herein were filed in the Office of the Clerk of the United States District Court for the Southern District of New York on the 9th day of August, 1920.

Dated New York, August 9, 1920.

Yours, etc.,

SHEARMAN & STERLING,

Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

To

Charles D. Newton, Esq.,
Attorney-General, State of New York.Wilber W. Chambers, Esq.,
Solicitor for Defendant Charles D. Newton.Terence Farley, Esq.,
Solicitor for Defendant Lewis Nixon.William J. Morris, Esq.,
Solicitor for Defendant Denis O'Leary.

180 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Lewis Nixon, Constituting the Public
Service Commission of the State of New York for the First Dis-
trict, Defendants.

Complainant's Exceptions to Report and Opinion of Special Master.

Now comes the complainant, New York and Queens Gas Company, and excepts to the Findings of Fact and Conclusions of Law filed herein by Hon. Abraham S. Gilbert, the Special Master herein, in the following particulars, to wit:

(1) Excepts to the failure of the Master to find that the actual and reasonable cost to the complainant company of the items referred to in Finding No. 28, which enter into the cost of distribution, was, during the year 1919, not less than 32 cents per thousand cubic feet of gas sold (Complainant's Exhibit 64, showing Cost of Production and Distribution for the Year ended December 31, 1919; Teele's testimony, folios 362 et seq.).

181 (2) Excepts to the failure of the Special Master to find that the actual and reasonable cost to the complainant company of the items referred to in Finding No. 28, which enter into the cost of distribution, was, as of May 25, 1920, and as of the time of the making of the report by the Special Master, not less than 39.82 cents per thousand cubic feet of gas sold (Complainant's Exhibit 90; testimony of witness Spear, fol. 2879-2938, pp. 960-980, particularly fol. 2935-2938, pp. 979-980).

(3) Excepts to the failure of the Special Master to find that the reasonable cost of the gas delivered to its consumers by the New York and Queens Gas Company during the year 1920 was \$1.138 per thousand cubic feet of gas, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of gas delivered to the consumer, in 1919, \$1.0705 per thousand cubic feet (Complainant's Ex. 64; Teele's testimony, fol. 362 to 465, pp. 121 to 151), and that as of May 25, 1920, and as of the time of the filing of the Master's Report, the reasonable cost of such gas was \$1.3417 per thousand cubic feet, from which should be deducted 6.75 cents per thousand cubic feet for miscellaneous operating revenue, making the net cost of such gas

\$1,3417 per thousand cubic feet (Complainant's Ex. 90; testimony of witness Spear, fols. 2879-2938, pp. 960-980, particularly fols. 2935-2938, pp. 979-980).

(4) Excepts to the failure of the Special Master to find that the net deficit to the complainant from its gas operations in 1919 was 7.54 cents per thousand cubic feet of gas sold, irrespective of 182 any return upon any of the property used in its gas operations (Complainant's Ex. No. 64, Teele's testimony, fols. 362 to 465, pp. 121 to 151) and that as of the present time, such net deficit is at least 27.23 cents per thousand (Complainant's Ex. 90; Spear's testimony, fols. 2879-2938, pp. 960-980).

(5) Excepts to the failure of the Master to find that the complainant was, on January 1, 1920, and now is, entitled to include in the amount upon which it is entitled to a fair return, the sum of \$165,000 for working capital. (Miller's testimony, fol. 2102, p. 701, fols. 2127-2133, pp. 709-711.)

(6) Excepts to the failure of the Master to find that the tangible and intangible property (including land, plant, distributing system, franchises and rights) acquired by the complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, actually cost, prior to August 1, 1904, and was reasonably worth at the time of such acquisition by the complainant, the sum of \$1,100,485, and that with the actual cost of the net additions thereto from August 1, 1904, to January 1, 1920, exclusive of working capital amounting to \$850,389.08, the total cost of such property owned and used by the complainant as of January 1, 1920, was the sum of \$1,950,847.08, and that with working capital, for which \$165,000 is a reasonable allowance, the total cost thereof was, as of January 1, 1920, \$2,115,847.08; and that the fair value of the property used 183 and needed in the manufacture and distribution of the gas sold by the complainant as of January 1, 1920, and the present time, was and is in excess of the sum of \$2,115,-\$47.08, and the complainant was and is constitutionally entitled to have its rate such as to yield a fair return upon at least that sum. (Complainant's Ex. 96; Miller's Testimony, fols. 4337-4352, pp. 1446-1451; Miller's testimony, fols. 2101-2102, p. 701.)

(7) Excepts to the Master's failure to find as follows:

Upon acquiring the capital stock and outstanding capital obligations of the Newtown and Flushing Gas Company in 1904, the complainant company paid for the same by issuing its capital stock for the par value of \$600,000, and its first mortgage bonds of the par value of \$650,000, making in all \$1,250,000. Although the original cost to the Newtown and Flushing Gas Company or the predecessor companies of all the property at that time in existence, including the franchises and rights, thus acquired by the complainant, cannot now be ascertained, I am satisfied, and so find, that it had theretofore cost, and was worth, in 1904, at least what the complainant company paid for it as represented by the par or face value of such stock and bonds, and that such stock and bonds so paid over for the

property so acquired were, at that time, worth at least \$1,250,000. (Complainant's Ex. 114, Spear's Testimony, fols. 6660, 6680, pp. 2220, 2227.)

(8) Except to the Master's failure specifically to find as additional items of value to the items found in Finding No. 40, as included in the cost to reproduce the property of the complainant as of January 1, 1920, used and useful in its gas business the following:

184 Organization and development prior to construction	\$135,000
Cost of financing.....	150,000
Engineering, superintendence and general contractor's expense and profit.....	200,000
Interest during construction.....	101,096
Taxes on land during construction.....	345
Administration, legal and miscellaneous expenses during construction	45,000
Working Capital.....	165,000
"Going Value".....	500,000

(Miller's Testimony, fols. 2101-2133, pp. 701-710.)

(9) Excepts to the Master's failure to find that the reasonable and proper return upon the capital invested in the complainant's property, upon the basis of the cost thereof, at the rate found by the Master in Finding No. 45, amounted to \$169,267.77. (Complainant's Ex. 96 of Summary of Cost of plant and distribution system to and including December 31, 1919.)

(10) Excepts to the Master's failure to find as a part of the reasonable and necessary operating expenses found in Finding No. 48, and to the Master's elimination in his Opinion under the title "Eliminated Items," at fols. 103-105, of all of the expenditures made by the complainant during 1919 of \$747.46 for defensive emergency service and of \$15,518.73 for the prosecution of the present rate case. (Complainant's Exhibits 64 and 65; Teele's Testimony, fols. 362 to 465, pp. 121 to 151).

185 (11) Excepts to the Master's finding at folio 110 of his Opinion, under the title "Franchises and Rights Acquired by the Complainant," that "At the time of the merger, the complainant * * * had no assets of any kind or description," on the ground that the franchise owned by the complainant to do business (Complainant's Ex. 1, fols. 41-43, pp. 14-15), and the services and expenditures in connection with the complainant's incorporation created and constituted valuable property rights.

Dated, New York, August 9, 1920.

SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

186 [Endorsed:] 8-10-'20. Index No. —. U. S. District Court, Southern District of N. Y., County of —. New York and Queens Gas Company, Complainant, against Charles D. Newton, et al., Defendants. (Copy) Complainant's Exceptions to Report & Opinion of the Special Master. Shearman & Sterling, Solicitors for Complainant, 55 Wall Street, Borough of Manhattan, New York City, N. Y. Due and timely service of a copy of the within — on the — day of — 191-, is hereby admitted. —, Attorney for —. Public Service Commission for the First District, Office of Counsel. Rec'd Aug. 10, 1920. Referred to Mr. Neumann.

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VIII.

District Court of the United States, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Notice of Final Hearing.

Take notice that this cause and the issues therein will be brought on for final hearing at a Stated Term of the District Court of the United States for the Southern District of New York to be held in United States District Court, Room Number 235, in the Post Office Building, Park Row, in the Borough of Manhattan, City of New York, on August 19, 1920, at 10:30 o'clock in the forenoon of that day; and that at said time and place we shall move the said Court for an order sustaining the complainant's exceptions to the Master's report herein filed, and confirming said report in all other respects, and shall also move, upon the pleadings herein, the order appointing the Special Master, the testimony and exhibits received
188 by the Special Master, the report and opinion of the Special Master, and exceptions thereto filed herein, and upon all of the proceedings herein, for a final decree in accordance with the prayer of the bill of complaint herein, and for such other and further relief as to the Court may seem just and proper and as the nature of this case may require.

Yours, etc.,

SHEARMAN & STERLING,
Solicitors for Complainant.

55 Wall Street, Borough of Manhattan, City of New York.

Dated, New York, August 10, 1920.

WILLIAM L. RANSOM,
CHARLES A. VILAS,
JACOB H. GOETZ,
Of Counsel.

To:

Wilbur W. Chambers, Esq.,
Solicitor for Defendant Charles D. Newton,
51 Chambers Street, New York City.
William J. Morris, Esq.,
Solicitor for Defendant Dennis O'Leary,
Court House, Long Island City, N. Y.
Terence Farley, Esq.,
Solicitor for Defendant Lewis Nixon,
49 Lafayette Street,
New York City.

189 [Endorsed:] 8-10-20. Index No. —. Year 19—. Dis-
trict Court of the U. S. Southern District of N. Y., New York
and Queens Gas Company, Complainant, against Charles D. Newton,
as Attorney-General of the State of New York, et al., Defendants.
Notice of Final Hearing. Shearman & Sterling, Attorneys for Com-
plainant, 55 Wall Street, New York. Public Service Commission
for the First District, Office of Counsel. Rec'd Aug. 10, 1920. Re-
ferred to Mr. Neumann.

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IX.

United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Denis O'Leary, as District Attorney of the County of Queens,
State of New York, and Lewis Nixon, Constituting the Public
Service Commission of the State of New York for the First Dis-
trict, Defendant.

Motion by the plaintiff for a permanent injunction, upon the Report and Opinion of the Special Master (hereinafter printed at page 27 et seq.). The plaintiff and the defendants had each filed exceptions to the Report and Opinion, in the respects indicated in the Opinion of the Court.

Shearman & Sterling (John A. Garver, William L. Ransom, Charles A. Vilas, and Jacob H. Goetz, of counsel, all of New York City), for the plaintiff.

Charles D. Newton, Attorney-General (Wilber W. Chambers, Charles J. Tobin, and Clarence C. Cummings, Deputies Attorney-General, of counsel), for the defendant Attorney-General.

Terence Farley, Counsel to the Public Service Commission for the First District (Ely Neumann and Edward M. Deegan, of counsel), for the defendant Public Service Commission.

191 MAYER, *District Judge*:

The bill prays for a decree which shall declare confiscatory and, therefore, unconstitutional, so much of Chapter 125 of Laws of New York of 1906 as prohibits the charging of more than one dollar per thousand cubic feet of gas sold, for gas furnished to the inhabitants of the Third Ward of the Borough of Queens, commonly known as Flushing and its environs.

As a necessary accompaniment, the bill further prays that defendant public authorities shall be enjoined from enforcing the rate prescribed by the statute.

The Special Master has submitted a full report, dealing as he was requested and as he properly should, with the various questions of fact and law presented for his consideration, so that the Court should be advised in respect of any question which it might deem necessary for decision.

At the outset, however, it is desirable to make clear that this Court is not a rate making body and that on final decree, the question on the pleadings and the proof is whether the statutory rate is confiscatory and, therefore, whether the defendant public officers should be enjoined from enforcing it. Questions which might be pertinent, where it is sought to fix a rate which shall be as nearly accurate as possible, may prove academic in a case where the basic question is the constitutionality of the statute prescribing the rate.

It is, of course, elementary that a Court approaches the consideration of a case of this kind with an attitude of cautious inquiry, always mindful of certain fundamental canons of construction e. g., the presumption of constitutionality, the conviction beyond a fair doubt that the statute is unconstitutional, and the like.

In that spirit of caution, the Court may eliminate for the purposes of the case some contentions which might be successfully pressed in a rate case pure and simple. The subject is delicate in the sense that it affects a large number of persons who, if possible, should be led to understand that the result which may place a heavier burden on them is just and that after making every fair allowance it nevertheless appears that there is no escape from relieving a public utility corporation from the operation of a statute which has become unconstitutional by reason of conditions and facts, never contemplated nor susceptible of prophecy fourteen years ago.

During those fourteen years, the definite trend of legislation,

National and State, has been in the direction of regulation by responsible public agencies.

The necessity of thus dealing with the subject has been accentuated by the unexpected and radical economic changes due to the war.

But, in addition, there are constant changes which no one can safely predict. It will suffice to illustrate with the price of oil. Increased demand for oil for use in industries and purposes not realized in 1904 has been perhaps the greatest factor in enhancing its price. No change in this regard seems to be in sight.

193 These plain conclusions, based on experience simple to understand, point to the desirability of confining a Court decision within the limits of the relief asked for in the bill, leaving to the Legislature the task of providing the machinery whereby rates may be flexible and may be made higher or lower from time to time, as facts and conditions may warrant.

Examining, then, this record and the Special Master's report, it is apparent that discussion is necessary only in respect of the more important features. Many of the details have been carefully and correctly disposed of by the Master in his comprehensive report, which fully, though concisely, has dealt with the essential features of the testimony. Repetition, in this opinion, of certain findings and of the reasons in support thereof is not requisite and it is enough to indicate approval of those findings.

1. The year 1919 is in this case "a sufficient basis for the calculation of the cost of production and the 'rate base' for a future long enough to call for some judicial action."

Municipal Gas Company v. Public Service Commission, 225 N. Y. 89.

Consolidated Gas Co. of New York v. Newton, et al., F. R. Kings County Lighting Company v. Nixon, et al., F. R.

The opinions of Judge Cardozo, Judge Learned Hand and Judge Hough, in the cases just cited, fully set forth the reasons for this conclusion and with those reasons on this point I am in full accord.

194 2. The Admissibility of the Books of Account.—This subject is fully dealt with in the opinions of Judge Learned Hand and of Judge Hough, in the cases supra. Common law proof of each and every of the thousand set items of the plaintiff's books of account would result in a practical denial of justice. The defendants had full facility to examine into and test the accuracy of the books. Capable cross examination rarely fails to disclose errors, omissions and inaccuracies, and injustice is rarely done in a case like this where there has been such full opportunity for examination.

3. The first inquiry is as to the cost of production of gas, the second as to cost of distribution. If the cost of production and distribution exceeds the statutory rate, that is the end of the case.

The Cost of Production.—Some attack has been made in respect of the cost of oil. An examination of the record shows clearly that

the oil accounts were carefully kept and checked. Most of the slight errors during the course of a month were corrected and the most generous acceptance of the contentions of the defendants would result in a variance of a few gallons which, translated into money, would be equivalent to a fraction so negligible as to amount to an infinitesimal part of a mill.

The cost of other materials and of labor is attacked not on the basis of evidence adduced but, as it were, on general principles.

195 The suggestion is that certain increased costs are suspicious.

Yet there is nothing suspicious in the testimony, and it is a matter of common knowledge that during the year 1919 the cost of materials such as are here concerned, and of labor, rose materially in this and other industries. An examination of the testimony, including the exhibits, leads readily to the conclusion that the Special Master was right in his figures. It was made entirely plain that these costs, in the main, were greater in the first five months of 1920 than in 1919. The point of the inquiry in respect of 1920 was to ascertain whether there was any likelihood that the cost of 1919 had decreased or would decrease and no such hope was realized.

4. Unaccounted-for Gas.—There is however, one item which by way of extra caution should be reduced. The "unaccounted-for" gas, so-called, for 1919, was 11.03 per cent. This percentage varies. Some years it may be more, others less. Therefore, the estimate of an expert like Mr. Woods is valuable. This plant, in his opinion should show a loss of about ten per cent and I accept that figure, for the purposes of this case, instead of 11.03 per cent.

In his finding No. 25, the Master found that "During the year 1919 this cost of water-gas manufacture was 71.73 cents per thousand cubic feet of gas sold." This figure was made up of 63.45 cents for cost of production plus 8.28 cents, cost attributable to loss by way of "unaccounted-for" gas. My figure of 10% instead of the Master's 11.03% changes the 8.28 cents to 7.45 cents. Therefore, the total as found by me, under this head, is 70.90 cents instead of the Master's figure of 71.73 cents.

196 5. Cost of Distribution.

(a) Defensive Emergency Service.—The Master excluded this item. In my opinion he is right. See, also, Judge Learned Hand's opinion in the Consolidated Gas case, *supra*.

(b) Expenses of Litigation.—These were also excluded by the Master, but were allowed by the Court in the Consolidated Gas case. I should follow the decision on this point in the Consolidated Gas case, were it not that I am firm in the conviction that while this item may properly be considered in fixing a rate it is not to be included in determining whether the rate is confiscatory. I agree with the Master, both in this conclusion and his reasons therefor.

(c) Interest on Unpaid Taxes.—I am of the opinion that this is not a proper charge in this case under the head of cost of distribution and other expenses, and I have excluded it.

(d) The Federal Tax on Bondholders' Income should not be charged as an expense; nor was it included by the Master.

(e) Whether or not the amount of income from insurance participation should be charged as an expense is a debatable question and for the purposes solely of this decision I have resolved the doubt in favor of the defendants.

(f) The items (c) and (e) figure out 0.09 cents, i. e. 9/100ths of one cent. The total cost of distribution and other expenses as worked out on Mr. Teele's sheet was 32 cents. From this total must be deducted an aggregate of 4.93 cents. This last figure is made up as follows: 0.09 for the two items, (c) and (e); 0.22 for item 197 (a) and 4.62 for item (b). Added together the total of these

is 4.93 cents. Deducting then from 32 cents the sum of 4.93 cents leaves, under the heading of cost of distribution and other expenses, 27.07 cents. Add to this the item for replacement of 3 cents and for taxes 7.07 cents and the total is 37.14 cents.

6. If then the 70.90 cents and 37.14 cents be added together, expressed in dollars, the total is \$1,0804 instead of \$1,0880, as found by the Master in finding No. 30. Deducting from \$1,0804 the figure of .9675 (for miscellaneous operating revenue as found in finding No. 30) the net cost of gas delivered to the consumer in 1919 was \$1,0129.

In other words, after making the various allowances, supra, in favor of defendants, to an extent greater than found by the Master, it appears that in 1919 the net cost of gas delivered to the consumer was approximately 1.29 cents in excess of the rate of \$1.00 provided for by the statute.

In arriving at this figure it will be appreciated that I have stripped the constituent items down to their lowest minimum.

7. If the figure of 99.51 cents, representing the average selling price of gas be taken, then the deficiency is 1.78 cents per thousand cubic feet of gas delivered. The figure of 99.51 cents results from the fact that under the statute, plaintiff is required to deliver gas to the City of New York as a municipality at the rate of 75 cents. This rate has not been attacked by suit. The City in its corporate capacity is entitled to have gas furnished to it at a lesser rate than the private consumer. This fact, however, does not afford any reason 198 why the private consumer should make up the deficiency caused by the lower rate of 75 cents to which the City of New York is entitled. In other words, the fact that the average selling price of plaintiff's gas is 99.51 cents is irrelevant to the ultimate question in the case. In determining whether the statute is confiscatory the inquiry must start with the proposition that plaintiff under the statute may charge the private consumer (as distinguished from the municipality) \$1.00 and then the question is whether the cost of production and distribution is in excess of that dollar.

8. It having appeared, supra, that the cost of production and distribution in 1919 was in excess of the statutory rate even though to

a slight extent, and that conditions in the early months of 1920 showed no prospect for a lesser cost, but on the contrary indicated increased cost, it makes little difference what elements are included or eliminated from the rate base or what theories shall obtain in respect thereof. If every debatable figure and question involved in the rate base were resolved in favor of defendants, plaintiff, under the statute, would still fail to receive the return to which it is entitled. For the purposes of this case, it does not make any difference whether the correct rule is reproduction value with or without so-called theoretical depreciation, or actual cost, with or without theoretical depreciation; nor does it make any difference whether the rate of return shall be six, seven or eight per cent. Any expression of opinion which goes beyond the requirements of the case would be mere dictum and in the circumstances would announce little more than an individual opinion. Besides, these questions of reproduction 199 value, actual cost and theoretical depreciation, and the like, are as much, and, perhaps, more, in the nature of economic questions than questions of law, and there is no need of discussing them when their determination is not required for the purposes of the case.

For the reasons outlined, plaintiff is entitled to be relieved from the operation of the statute, so far as it requires the furnishing of gas at the dollar rate to private consumers.

JULIUS M. MAYER,
District Judge.

November 3, 1920.

200 *Addendum.*

Form of Decree. The details of the decree will be considered after the usual notice of settlement. In order to guide counsel I may now state that I do not intend to fix a rate pending appeal. If it be assumed that the Court has the power so to do, yet my view is the same as that of Judge Hough, i. e., that it is no part of the duty of the Court to fix such a rate. Once the statute is declared unconstitutional, the responsibility of selling the gas to the consumer at a fair rate rests upon the plaintiff, until such time as proper and constitutional regulatory statutes may be enacted. Further, it is apparent that this whole subject needs prompt and intelligent treatment at the hands of the Legislature. The Court, in my opinion, should not fix a rate pending appeal, and, thus, perhaps furnish a cause for the postponement by the Legislature of the speedy consideration of this important subject. I see no occasion for the Court to pass on many of the findings of the Master which are unnecessary for the purposes of this decree, but which were properly made by the Master in his desire to present to the Court all of the questions of fact and law which the Court might regard as germane and necessary to a decision.

It will probably save counsel some time and labor if they will confer with me as to the details of the decree on November 8th at 5 p. m. I should like the Special Master also to be present.

J. M. M.

D. J.

201 United States District Court, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York; and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

Supplemental Memorandum on Settlement of Decree.

William L. Ransom, Charles A. Vilas, and Jacob H. Goetz, for the plaintiff.

Ely Neumann and Edward M. Deegan, for the defendant Nixon.

Wilber W. Chambers, for the defendant Newton.

MAYER, *District Judge:*

After the opinion herein was filed, my attention was called to some slight errors in calculation.

At a conference of counsel with the Court, the Special Master being present pursuant to the Court's request the Court asked the

Special Master to check up the figures. This he has done 202 and I file herewith his informal memorandum. I have revised the opinion on file accordingly. In order that the changes may clearly appear, they have been noted in ink on the original filed opinion. The net result is a difference of 53/100ths of a cent in favor of plaintiff, making the cost of production and distribution \$1.0129 instead of \$1.0076.

Taking up the decree proposed by plaintiff; substitute the word "plaintiff" for "complainant", wherever it appears. Then take up the paragraphs as follows:

Paragraphs I and II. I will not depart from my view that the Court need not determine a rate base where the evidence shows that the cost of production and distribution exceeds the statutory rate. I have stated and now repeat that dicta tend only to confuse and embarrass, not merely the disposition of the particular case under consideration, but of similar litigations. There is force, however, in the contention that the Court should find that plaintiff owns pro-

erty of some value. The actual cost of the tangible property aggregates \$1,130,497.08. In respect of this figure there is no controversy (see Page 38 of printed Report of Special Master*). This figure, of course, does not include various other controverted items referred to in the Master's Report. Thus, the sum of \$1,130,497.08 is the absolute minimum of actual investment and I hold also, on the evidence in the case, that it is the minimum of reproduction value.

If it were necessary to find the reproduction value the figure 203 would be much greater. It is, however, sufficient, for the purpose of this case, that the Court shall find said sum of \$1,130,497.08 as the smallest amount upon which a return should be figured. All other findings touching the rate base have become immaterial to this case. At any rate of return from 8% down to 6%, the statutory rate of \$1.00 is confiscatory on the evidence in this case.

Therefore, except as just indicated, I will deal as follows with the exceptions which relate to the rate base: "exceptions numbered (here set forth numbers) are not passed upon, because immaterial to this decree"; or if plaintiff prefers, I can follow Judge Hough's method of sustaining defendants' exceptions without prejudice because immaterial.

Paragraphs I and II, therefore, should be redrafted to conform with the above. I do hope counsel can agree promptly as to the form of these paragraphs and save me the labor of checking up the exceptions.

Paragraphs III and IV. These should read "since at least January 1, 1919".

Paragraph V. Here change "in respect" (line 16) to "with respect". On last line (of page), after "said Act" insert "in so far as it fixes or prescribes a rate for gas manufactured or sold by plaintiff." Otherwise, this paragraph will remain unchanged.

Paragraph VI. Here let the phrase be as follows: "together with the names and addresses of the consumers from whom such moneys are so collected, in so far as such names or addresses are known to the complainant or appear upon its books and records; and such accounts." Also insert "employees" after "defendants".

204 Paragraph VIII. Strike out "and before the fifteenth day of December 1920".

Paragraph IX. Add at the end the following: "until the excess monies, so received and collected, together with interest thereon, shall aggregate the sum of \$200,000, in which event, the defendants or any of them may make application to this Court, on three days notice, for an additional bond or security and in such form and manner as this Court may direct".

*(See pages 64, 66-7, 69-70, et seq., hereof, post; see also, Paragraphs I and II of the Judgment and Decree of November 19, 1920, printed on pages 19 and 29 hereof, post.)

Paragraph X. Change "some" to "any".

Paragraph XI. Change "some" to "any". Let the last part read
 *** * * United States Supreme Court to advance the said appeal
 upon the calendar of the said court".

If the defendants do not move promptly, this Court's attention may be called to that fact and it will deal with the matter as may then appear. It is important in the interest of the consumers, as well as of plaintiff, that the appeal should be expedited. The record is comparatively brief for a rate case and the questions in the case at bar are much more limited in number than in most cases of this kind.

Paragraph XII. Add at beginning "From and after the date hereof and".

Paragraph XIII. Add at end thereof "by reason of any acts or events occurring after the date of this decree".

Paragraph XIV. Add at end thereof "in accordance with the Rule of the Supreme Court of the United States on this subject."

Finally, as to Insurance Participation certificates, the subject-matter need not be further discussed, except to state that perhaps this income should be credited as an expense; but I shall leave the question open as I did in my opinion. It is unimportant in this case.

I shall not reopen other questions. I have endeavored to make clear that this is not a rate case, that I am not fixing a rate, and that the Legislature or any public body dealing hereafter with the subject may be advised that this Court's opinion and decree are confined to the issues raised in this law suit.

Submit decree at my Chambers in accordance with above by
 Thursday, 2 P. M.

JULIUS M. MAYER,
District Judge.

November 16, 1920.

206 (Letter Filed with Supplemental Memorandum.)

November 9, 1920.

Hon. Julius M. Mayer,
 Post Office Building,
 New York City.

In re New York & Queens.

MY DEAR JUDGE:

I have just gone over the figures in the New York and Queens matter with Judge Ransom.

His accountants, figuring it somewhat differently than you arrived at the cost of unaccounted for gas on the basis of 10% gas at 7.45¢ instead of 7.13¢ as figured in your opinion. I think

contention is correct. This difference of 7.45¢ instead of 7.13¢ makes the cost of production in 1919, 70.90¢ instead of 70.58¢.

Referring now to the three items which defendants contended should be deducted (see page 73 of their brief), Judge Ransom points out to me that I did not take in as an expense the item of \$443.25, bondholders' interest for the very simple reason that it was not included as an expense by Mr. Teale who made up the figures for the Gas Company. In other words, the attorneys for the defendant made the same error here as they did as to the defensive emergency fund which I had already omitted. This item of \$443.25 must, therefore, be disregarded. If you deduct it now it will be charged twice against the Gas Company.

As to the item of interest on insurance participation, the amount stated in the defendants' brief is clearly an error, the correct amount being, as stated by you, .02¢ per thousand or \$57.58 in all, instead of \$534.88 as stated in the defendants' brief.

207 There should, therefore, be deducted from cost of distribution only the following items: \$233.71 interest on unpaid taxes, and \$57.58 interest on insurance participation, making a total of \$291.29 representing .09¢ per thousand cubic feet.

To summarize, therefore, the corrections indicated result in showing the cost of production of gas sold to be 70.90¢ instead of 70.58¢; the cost of distributing gas to be 27.07¢ instead of 26.86¢ as figured by you. To this must be added the items of replacement of 3¢ and taxes 7.07¢ making a total cost of distribution, plus replacements and taxes of 37.14¢ instead of 36.93¢ as stated by you in your opinion (Paragraph F).

Yours very truly,

A. S. GILBERT.

208 District Court of the United States, Southern District of New York.

In Equity.

No. 16-44.

NEW YORK AND QUEENS GAS COMPANY, Plaintiff,

against

CHARLES D. NEWTON, as Attorney General of the State of New York; Denis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Constituting the Public Service Commission of the State of New York for the First District, Defendants.

This cause came on to be heard at the August, 1920, Term of this Court, and was argued by counsel; and thereupon, upon consideration hereof, it is

Ordered, adjudged and decreed as follows:

1. The plaintiff's exceptions to the Report and Opinion of the Special Master as filed herein on August 6, 1920, relative to items

entering into the cost of manufacture and distribution of gas by it, are overruled, without prejudice, however, to the allowance of any such items of expense in a determination as to the rate reasonably to be charged for gas furnished by the plaintiff to its consumers. The plaintiff's exceptions relative to the amount and value of property upon which the plaintiff claims to be entitled to a fair return through the rates chargeable to its consumers, are overruled, 208^{1/4} inasmuch as a determination of the full value of such property is unnecessary for the reasons set forth in the Opinion filed herein by Mayer, D. J., on November 3, 1920, and the Supplemental Memorandum filed by Mayer, D. J., on November 16, 1920.

II. The defendants' exceptions relative to "unaccounted-for-gas," the net cost of gas delivered to consumers, and the rate collected from private consumers, are sustained to the extent indicated in paragraphs "4," "5," "6," and "7" of the Opinion filed by Mayer, D. J., on November 3, 1920, and the corresponding findings of the Special Master are modified accordingly. The Court further finds that as of the time of inquiry herein the plaintiff owned and used in its gas business tangible property in which its actual and uncontested investment was at least the sum of \$1,130,497.58; that this sum represents an absolute minimum of the plaintiff's investment in tangible property, aside from working capital and other items controverted as to amount by the defendants; and that the present value of such property, on a cost of reproduction basis, is at least \$1,130,497.58 and would be much greater, if it were necessary to find the full reproduction cost. So much of the defendants' exceptions as are inconsistent with the above-stated finding of this Court is hereby to that extent overruled. All exceptions filed by the defendants and not hereinbefore referred to are not passed upon because immaterial to this decree.

III. Chapter 125 of the Laws of 1906 of the State of New York in so far as it prohibits the plaintiff from charging or receiving more than at the rate of One Dollar (\$1.00) per thousand cubic feet for the sale of gas in the Third Ward of the Borough of Queens, has been, since at least January 1, 1919, and now is, confiscatory, and deprives the plaintiff of its property without due process of law, contrary to Section 10 of Article I of the Constitution of the United States and to the Fourteenth Amendment thereof.

IV. The said statute has been since at least January 1, 1919, and now is, invalid as violative of the said provisions of the Constitution of the United States; except by injunction the plaintiff has no adequate remedy, at law or otherwise, for any injury resulting from the enforcement of said statute; and the plaintiff is entitled to the relief hereinafter prescribed.

V. The defendants Charles D. Newton as Attorney-General of the State of New York, Denis O'Leary as District Attorney of the County of Queens, State of New York, and Lewis Nixon constituting the Public Service Commission of the State of New York for the First District, and each of them, and their, and each of their successors

office, their deputies and attorneys, and their, and each of their successors, servants and employees, and any and every person acting or purporting to act under and by virtue of the authority of Chapter 125 of the Laws of 1906 of the State of New York or any other provision of law, be, and each of them is, hereby restrained and enjoined from enforcing, and from attempting to enforce, against the plaintiff the provisions of Chapter 125 of the Laws of 1906 or any of them, with respect to the rates which the plaintiff may charge or receive for

gas manufactured or sold by it in the Third Ward of the Borough of Queens, or from bringing any action or proceeding in mandamus or by injunction or otherwise for the purpose of compelling compliance by the plaintiff with the said Act, in so far as it fixes or prescribes a rate for gas manufactured or sold by the plaintiff, or from doing any act or thing interfering with the right or authority of the plaintiff forthwith to charge, bill, collect and receive for such gas any rate which it might lawfully charge or receive if the provisions of the said Act relative to the rate to be charged or received by the plaintiff were not operative.

VI. In the event that an appeal from this decree is taken by the defendants, or any of them, within the time hereinafter prescribed, the plaintiff shall thereafter and until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled by order of this Court, keep true and correct accounts and records of all gas sold by it and of all moneys received by it for gas sold by it, so as accurately and completely to show the moneys received by it, for gas sold by it from and after this date, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar (\$1.00) per thousand cubic feet of gas sold, together with the names and addresses of the consumers from whom such moneys are so collected in so far as such names or addresses are known to the plaintiff or appear upon its books and records; and such accounts and records shall, upon application to this Court, be at all reasonable times open to the inspection and audit of the defendants, their employees, or their successors or representatives.

VII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, the plaintiff shall, on the 15th day of December, 1920, and on the 15th day of each month thereafter, until the bond provided for in Paragraph VIII hereof shall have been cancelled and annulled or until this Court shall order otherwise, file in the office of the Clerk of this Court a statement, sworn to by its vice-president, secretary or treasurer, showing the moneys received by it during the preceding month, for gas sold by it, in excess of the sums which would have been received for such gas if the same had been sold at the rate of One Dollar (\$1.00) per thousand cubic feet, such verified statement also to certify that the sum so shown is all that has been so collected during the preceding month.

VIII. If, within the time hereinafter prescribed, an appeal from this decree is taken by the defendants, or any of them, then within

ten days thereafter, the plaintiff shall file with the Clerk of this Court, in form and tenor first approved by this Court, its bond or undertaking, with the Consolidated Gas Company of New York as surety, in the sum hereinafter prescribed, conditioned for the repayment to the consumers of the plaintiff, in the event that this decree is reversed on appeal and it is ultimately decided that the plaintiff is not entitled to judgment in this action, of the respective sums of money received and collected by the plaintiff from such consumers in excess of the sums which would have been received if such gas had been sold and billed at the rate of One Dollar (\$1.00) per thousand cubic feet, together with interest at the rate of six (6) per cent upon any such excess so collected and repaid, the obligation of such surety upon and under such bond or undertaking to be in the sum of Two Hundred Thousand Dollars (\$200,000).

IX. Upon filing such bond and thereafter, unless and until this Court shall otherwise direct, the plaintiff shall be entitled to and may retain and use any and all moneys received and collected by it in excess of the sums which would have been received and collected at the said rate of One Dollar (\$1.00) per thousand cubic feet of gas sold. When the excess moneys so received and collected shall aggregate the sum of Two Hundred Thousand Dollars (\$200,000) the defendants, or any of them, may make application to this Court, on three days' notice, for an additional bond or security and in such form and manner as this Court may direct.

X. If an appeal from this decree is taken by the defendants, or any of them, and the final judgment entered herein sustains the invalidity of Chapter 125 of the Laws of 1906 as to the plaintiff, the said bond or undertaking shall thereupon and thereby be cancelled or annulled, and the plaintiff and the said Consolidated Gas Company of New York shall thereupon and thereby be relieved from any and all liability thereunder, and appropriate directions accordingly shall be made by this Court.

XI. The plaintiff shall be required to do the acts and things specified in Paragraphs VI, VII, VIII and IX, hereof only in case an appeal from this decree is taken by the defendants, or any of them, within thirty (30) days from the entry of this decree, and that the defendants so appealing, and each of them, shall perfect and prosecute any such appeal and print and file the record and all necessary papers to that end, promptly and without delay, and shall, with all convenient speed thereafter, serve a notice of application to the United States Supreme Court to advance the said appeal upon the calendar of the said Court.

XII. From and after the date hereof and during the pendency of any appeal taken and prosecuted as aforesaid, the plaintiff shall cause to be placed, in red ink or color conspicuously on the face of each gas bill sent out by it to any consumer charged at a rate in excess of One Dollar (\$1.00) per thousand cubic feet of gas sold, the words, "Preserve this bill in order to protect your rights" and

also the words, "This bill is rendered subject to the notice on the back hereof"; and on the back of each such bill, the plaintiff shall cause to be printed or attached, in conspicuous type, a notice in substantially the following form:

"For the gas supplied on and after November —, 1920, the price of — is charged. Pursuant to the judgment entered by the United States District Court for the Southern District of New York on November —, 1920, the amount collected in excess of One Dollar (\$1.00) per 1,000 cubic feet will be subject to the further direction of the Court."

The plaintiff shall cause notices to similar effect to be placed on each prepayment meter in service and on the back of each prepayment meter receipt issued by the plaintiff during the period above indicated.

213 XIII. At any time while the injunction hereinbefore granted remains in force, any party hereto, or his successors or assigns, may apply, upon notice, at the foot hereof, to vacate, modify or extend the foregoing injunction because of any change of circumstances since the entry hereof; or to vacate the requirements of Paragraphs VI, VII, VIII, and IX, hereof, if the conditions prescribed in paragraph XI, hereof as to the prosecution of such appeal are not fulfilled by the defendants; or for any additional relief to which he may deem himself entitled by reason of any acts or events occurring after the date of this decree.

XIV. The plaintiff shall recover its taxable costs and disbursements of the defendants, to be borne equally by them; and the allowance and expenses of Abraham S. Gilbert, the Special Master appointed to hear and report herein, shall be fixed by the Court, upon motion made by any party hereto, or by the said Special Master, and shall be paid by the defendants equally, in accordance with the rule of the Supreme Court of the United States on this subject.

New York, November 19, 1920.

JULIUS M. MAYER,

U. S. D. J.

214

X.

United States District Court, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of Queens County, State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District, Defendants.

The petition of Charles D. Newton, as Attorney-General of the State of New York, and Alfred M. Barrett, constituting the Public

Service Commission of the State of New York for the First District; and Dennis O'Leary, as District Attorney of the County of Queens, shows to this court:

First. That Charles D. Newton, is the Attorney-General of the State of New York, Alfred M. Barrett is the Commissioner, constituting the Public Service Commission of the State of New York for the First District, and Dennis O'Leary is District Attorney for the County of Queens, defendants in this action.

Second. That this is an action in equity to have declared unconstitutional chapter 125 of the Laws of 1906 of the State of New York, on the ground that the rate fixed by that act for gas sold to 215 private consumers in the City of New York is now confiscatory.

Third. The case was tried before a Special Master. The trial began on or about April 15th, 1920, and continued until June 28th, 1920. The record before the Special Master consists of approximately 2,400 pages of testimony and approximately 200 exhibits.

Fourth. The Special Master's report was filed in the office of the Clerk of the United States District Court for the Southern District of New York on or about July 16, 1920. The defendants filed exceptions to the Special Master's report in the office of the Clerk of the United States District Court on or about August 6, 1920.

Fifth. The exceptions to the Special Master's report filed by the defendants came on for hearing before the District Court Judge (Julius M. Mayer sitting) on August 19-21, 1920. The opinion and decree of the District Court were filed in the office of the Clerk of the United States District Court for the Southern District of New York on November 19, 1920.

Sixth. The said decree restrains the defendants from enforcing in any way chapter 125 of the Laws of 1906, of the Laws of the State of New York, and declares that the said statute violates the Fourteenth Amendment of the Constitution of the United States.

Seventh. The above-named defendant Charles D. Newton, as Attorney General of the State of New York; Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District, and Dennis O'Leary, as District Attorney of the County of Queens, feeling aggrieved by the decree entered in the above-entitled cause on the 19th day of November, 1920, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors herewith filed, and pray that their appeal be allowed and citation be issued as provided by law, and that a transcript of the record of proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Supreme Court

at Washington, D. C., under the rules and regulations of such court made and provided, on the — day of ——, 1921, and your petitioner prays that an order be made dispensing with security.

Dated, New York, December 15, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York,

By WILBER W. CHAMBERS,
Solicitor for Defendant Newton.

ALFRED M. BARRETT,
Public Service Commissioner, First District.

DENNIS O'LEARY,
District Attorney of Queens County.

217 United States District Court, District of New York.

STATE OF NEW YORK,

*Southern District of New York,
City and County of New York, ss:*

Alfred M. Barrett, constituting the Public Service Commission of the State of New York for the First District, being duly sworn, says:

I am one of the defendants in the above entitled action. I have read the foregoing petition and the same is true of my own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.

ALFRED M. BARRETT.

Sworn to before me this 6th day of December, 1920.

HARRY B. MORITZ,
Notary Public, Queens County, No. 1646.

Certificate filed in New York County.

County Clerk No. 263.

Register No. 1865.

218 [Endorsed:] District Court of U. S., Southern District of N. Y. New York & Queens Gas Co., Complainant, vs. Charles D. Newton, as Attorney-General of State of New York, Dennis O'Leary, as District Attorney of Queens Co., et al., Defendants. Petition & Allowance of Appeal. Wilber W. Chambers, Solicitor for deft. Charles D. Newton Attorney-General. Capitol, Albany, N. Y.

Xa.

219 United States District Court, Southern District of New York.

NEW YORK AND QUEENS GAS COMPANY, Complainant,
against

CHARLES D. NEWTON, as Attorney-General of the State of New York; Dennis O'Leary, as District Attorney of Queens County, State of New York, and Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, Defendants.

The defendants Charles D. Newton, as Attorney General of the State of New York, Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, and Dennis O'Leary, as District Attorney of the County of Queens, conceiving themselves aggrieved by the decree dated November 19th, 1920, in the above entitled cause, do hereby appeal from said final decree of November 19, 1920, to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and pray that their appeal be allowed, and that citation be issued as prescribed by law, and that a transcript of record of proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Supreme Court situated at Washington, D. C., under the rules of said court in such 220 cases made and provided on or before the 15 day of January, 1921, unless further attended.

And your petitioner further prays that the bond to cover the costs of the appeal be dispensed with.

Dated, New York, December 17, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.

WILBER W. CHAMBERS,
*Solicitor for Defendant Newton, Office & P. O.
Address, Capitol, Albany, N. Y.*

TERENCE FARLEY,
*Solicitor for Defendant Barrett, Office & P. O.
Address, #49 Lafayette St., New York City.*

WILLIAM C. MORRIS, JR.,
*Solicitor for Defendant O'Leary, County Court
House, Long Island City, N. Y.*

221 Appeal allowed and bond to cover costs of appeal is dispensed with. Return of record on appeal to be filed on or before the 15 day of January, 1921, unless time further extended.

Dated, New York, December 17, 1920.

JULIUS M. MAYER,
U. S. D. J.

XL.

222 District Court of the United States, Southern District of New York.

NEW YORK & QUEENS GAS COMPANY, Complainant,
vs.

CHARLES D. NEWTON, as Attorney General of State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, et al., Defendants.

Assignment of Errors.

Charles D. Newton, Attorney-General of the State of New York.
Wilber W. Chambers, solicitor for defendant Newton, office & P. O. address, Capitol, Albany, N. Y.

Terence Farley, solicitor for defendant Barrett, office & P. O. address, # 49 Lafayette St., New York City.

William H. Van Steenbergh, solicitor for defendant O'Leary, office & P. O. address, County Court House, Long Island City, N. Y.

223 District Court of the United States, Southern District of New York.

NEW YORK & QUEENS GAS COMPANY, Complainant,
vs.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Denis O'Leary, as District Attorney of the County of Queens, State of New York, and Alfred M. Barrett, Constituting the Public Service Commission of the State of New York, for the First District, Defendants.

Assignment of Errors.

And now come the defendants Charles D. Newton, as Attorney-General of the State of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, in the above entitled cause, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal from the decree made in this cause by this Honorable Court on the 19th day of November, 1920.

1. That the District Court of the United States, Southern District of New York, erred in not granting defendants' motion to
224 dismiss the bill of complaint, upon the ground that it failed to state facts sufficient to constitute a cause of action; among other things, for lack of an allegation that complainant had theretofore completely or substantially complied with the requirements of chapter 125 of the laws of 1906, the act which it assails in this action.

2. That the said Court erred in sustaining the report of the Special Master, denying the motion of the defendants at the end of complainant's case to dismiss the bill of complaint and overruling the exceptions of the defendants to such denial.

3. That the said Court erred in sustaining the report of the Special Master, denying the motion made by defendants at the end of the whole case to dismiss the bill of complaint and overruling the exceptions of the defendants to such denial.

4. That the said Court erred in not holding that the books of account of complainant which were introduced in evidence, were improperly admitted and the ruling in admitting them was erroneous and calls for a new trial, because the books were not books of original entry; that the one who made the entries therein was not produced and their accuracy proven or his death or unavoidable absence established.

5. That the said Court erred in not holding that the books of complainant offered in evidence were not kept in conformity with the uniform system of accounts of the Public Service Commission, and that proof of compliance with the Uniform System of Accounts of the Public Service Commission would not be proof of their accuracy and would not make them competent in this suit until properly proven, because they were not books of original entry and their accuracy was not proven.

6. That the said Court erred in not holding that there was an absence of competent proof by the complainant to establish the amount of gas made and sold by it, because the only evidence on the subject were the books which were improperly admitted in evidence.

7. That the said Court erred in not holding that there was an absence of competent proof by the complainant to establish its costs of the manufacture and distribution of gas, because the only evidence on the subject were the books which were improperly admitted in evidence.

8. That the said Court erred in not holding that the complainant had failed to prove that its business had been run efficiently, honestly, economically and prudently.

226 9. That the said Court erred in not holding that the statute in question should not be considered confiscatory merely upon financial results obtained in the abnormal year 1919 and part of the abnormal year 1920.

10. That the said Court erred in confirming the Master's report insofar as he found that the best criterion for judgment as to the operations of the complainant, was the year 1919, for the reason that said year was entirely abnormal due to the conditions arising out of the World War; the prices that obtain for materials and labor were unusual and temporarily very high and the period chosen is entirely too short for the determination of the questions here involved.

11. That the said Court erred in failing to hold that the test of this statute should be made upon the entire period covered by the complaint in this case, to wit—from 1906 to date, and in failing to hold that the period covered by the proofs herein of one year and five months, was and is too short for the formation of a proper judgment on the issues herein. The evidence shows, and the Court may take judicial notice, that the prices for material and labor which obtained in the abnormal years considered by the Court, were purely transitory and temporary, and that at the present time there is a marked recession of all prices and wages which will cause the
227 statutory rate herein questioned to be amply sufficient for all of the needs of the complainant company, even assuming the correctness of its exaggerated claims.

12. That the said Court erred in holding that there are constant changes in the prices of materials which no one can safely predict. On the contrary it can be safely predicted today, and the Court should have taken judicial notice of the fact, that prices of all materials are rapidly decreasing and will continue to decrease for sometime in the future.

13. That the said Court erred in holding that no change in the price of gas oil seems to be in sight. On the contrary, the Court should have taken judicial notice of the fact that the automobile industry, among others competing with the gas business for the products of petroleum of which gas oil is one, are no longer making the tremendous demands upon the market which they have made in the past, and that consequently there is a vastly increased and continually increasing supply of petroleum available for the productions of gas oil, and that the inevitable result of this condition will be a steadily diminishing price for gas oil.

228 14. That the said Court erred in holding that the oil accounts of the complainant were carefully kept and checked, that most of the slight errors during the course of a month were corrected, and the most generous acceptance of the contentions of defendants would result in a variance of a few gallons, which translated into money would be equivalent to a fraction negligible as to amount to an infinitesimal part of a mill, for the reason that the said finding of the court is contrary to the evidence and the weight thereof. The proof upon which the defendants' contentions are based shows conclusively that the errors and inaccuracies in the records of the complainant as to the question of gas oil are so material and so flagrant as absolutely to discredit the entire oil account of the complainant company.

15. That the said Court erred in holding that there is nothing suspicious in any of the increased prices claimed to have been paid by the complainant company in 1919 as compared with other years. On the contrary, the evidence not only from the books of the company, but as testified to by the witness Woods, leads to the inevitable conclusion that the figures of complainant for labor and materials for the year 1919 were padded for the purpose of this case, particu-

larly in such items as gas making labor, repair labor, repair materials, repairs and various other matters upon which the
229 operating expenses of the company are vitally dependent.

16. That the said Court erred in holding that the Special Master was right in his figures as to the cost of materials entering into the manufacture and distribution of gas in 1919. The Special Master on the contrary merely took the figures of the complainant as offered without addition, diminution or apparent analysis, without giving any proper heed to the valid claims of the defendants as to their inaccuracy and with entire disregard for the extreme faultiness of the proof presented.

17. That the said Court erred in holding that the proof presented as to the cost of production and distribution in the first five months of the year 1920, gave no hope of decreasing prices. On the contrary, the proof presented showed and the Court may take judicial notice, that the peak of high prices was reached before the expiration of the first five months of 1920, and that today prices are rapidly receding.

18. That the said Court erred in holding that 10% was the proper percentage of unaccounted for gas for the complainant company. The proof shows that unaccounted for gas in 1919 of 11.03% amounted in cents per M cubic feet to 8.27 cents, as compared with 4.40 cents per M in 1916, 4.11 cents per M in 1917 and 5.27 cents per M in 1918. The Court should have found that this excessive increase in gas unaccounted for of 3 cents per M or over 60%, was uncalled for, unexplained and was sufficient to cast doubt upon the entire good faith of the complainants herein. No figure higher than 7% should have been allowed or, in cents per M more than 5.27 cents. The amount of gas lost and unaccounted for does not vary with the price or the quality of materials purchased, and the comparatively level percentage of gas unaccounted for as shown in defendants' Exhibit A13, conclusively proves that the 60% increase in 1919 was not an honest figure.

19. That the said Court erred in holding that the cost of manufacture of gas for the year 1919 was 70.58 cents per M cubic feet sold. The evidence to sustain this finding of the court is, most of it incompetent and all of it unreliable and unsatisfactory. There should have been deducted from the operating expenses for that year large amounts for the excessive price of oil, for the excessive amounts of generator and boiler coal used, for the excessive amount claimed for gas making labor, and for excessive amounts in the repair account.

20. That the said Court erred in holding that the cost of distribution for the year 1919 was 36.93¢ per M cubic feet sold. The evidence upon which this is based is most of it incompetent and all of it unreliable and unsatisfactory.

21. That the said court erred in holding that the net cost of the gas per M cubic feet delivered to private consumers in 1919 was

\$1.0129, and that there was a net deficit per M cubic feet sold of .0129 of a cent in excess of the rate of \$1 provided for by the statute. The evidence upon which this was based is most of it incompetent and all of it unreliable and unsatisfactory, and the court should have made many deductions from the operating and distributing expenses in accordance with the proof submitted by the defendants. If there is substituted for excessive cost of repairs in 1919 the average of such repairs in previous years, and if there is deducted the expense of the rate litigation (\$15,815.73), and if the gas unaccounted for was taken at a reasonably low figure in accordance with the proof, there would appear an operating profit of at least \$12,000, which would give an adequate return for this period of abnormal prices and would make the average return for the past ten years, which should have been taken, amply sufficient.

22. That the said court erred in holding that conditions in the early months of 1920 showed no prospect for a lesser cost, but, on the contrary, indicated increased cost, for the reason that the proof does not sustain the finding, but, on the contrary, conclusively indicates that prices have begun to recede before the expiration of the first five months of 1920, and the court may take judicial notice, that prices are now rapidly receding.

232 23. That the said Court erred in holding that it makes little difference what elements are included or eliminated from the rate base, or what theories shall obtain in respect thereof, in view of its finding that there was a net deficit in the actual production and distribution of gas. The said Court's premise that there was such a net deficit is faulty and is not sustained by the evidence. The Court should have carefully considered and decided the important questions raised as to the rate base herein.

24. That the said Court erred in holding that if every debatable figure and question involved in the rate base were resolved in favor of defendants, plaintiff under the statute would still fail to receive the return — which it is entitled. The said finding is contrary to the evidence and the weight thereof, and is moreover based upon the false assumption that the year 1919 is a sufficient basis for declaring the statute herein confiscatory. The Court should on the contrary have examined the operating accounts and the rate base of the complainant in all of the years from the period 1906 to 1918 chosen by the complainant in its complaint, and should have made a finding as

233 to the rate base and should have passed the various theories presented in connection therewith, and should have found after such examination that the complainant company throughout the period from 1906 to 1919 inclusive, taken as a whole or in individual years, has made much more than a fair return upon its property actually and necessarily used in the public service.

25. That the said Court erred in failing to hold that the Master committed error in finding that in addition to the physical property of the complainant company, it was in the actual enjoyment of

franchises and rights, certain of them perpetual in character, for the reason that the said finding is contrary to the evidence and the weight thereof. All of the existing franchises including those claimed to have been acquired from the Newtown and Flushing Company are only to lay and operate mains and pipes in the streets, highways and public places in the Third Ward, Borough of Queens, former Village of Flushing, Village of Whitestone and in the town of Flushing outside of the then (May 1st, 1897) incorporated villages. The franchises moreover to operate in the former Village of Whitestone will expire by its terms December 30, 1922.

26. That the said Court erred in failing to hold that the Master committed error in finding that the complainant manufactures and distributes gas under and by virtue of the franchises and rights of the Newtown and Flushing Gas Company together with additional rights and franchises from time to time acquired by complainant, for the reason that the said complainant has since its incorporation acquired no additional franchises or rights.

27. That the said Court erred in failing to hold that the Master committed error in finding that the daily capacity of the complainant is not more than 2,250,000 cubic feet of gas and that by the addition of high pressure blowing apparatus this capacity will be increased to not exceeding 2,750,000 cubic feet of gas, for the reason that the said finding is contrary to the evidence and the weight thereof. The working capacity of the plant does not exceed 1,698,000 cubic feet of gas per day, and there is no evidence that the high pressure blowing apparatus mentioned by the Master has actually been installed.

28. That the said Court erred in failing to hold that the Master committed error in finding that complainant owns and uses 658,727 feet of mains of various sizes, and 7,998 services through which it furnishes gas to approximately 11,000 consumers, for the reason that the said finding is contrary to the evidence and the weight thereof; that the complainant actually owns not more than 657,584 feet of mains of various sizes and not more than 7,641 services from which it furnishes gas to approximately 10,357 consumers.

29. That the said Court erred in holding that the use of the store room and office building and shop building in Flushing, make for the more economical, efficient and satisfactory use of gas to consumers, for the reason that the said finding is contrary to the evidence and the weight thereof.

30. That the said Court erred in failing to hold that the Master committed error in not finding that the complainant company unreasonably and unduly, by vexatious legal processes, delayed the extension of its mains to Douglaston and Douglas Manor, a distance from Flushing of about six miles, and by reason of such delays, the cost of such extension was vastly increased and the revenues derived from *from* the territory there served, is and has been very much smaller than it would have been if complainant had made the addition promptly in accordance with its legal obligations.

31. That the said Court erred in failing to hold that the Master committed error in finding as a fact that the Public Service Commission has no right to fix rates in excess of those fixed by statute.

32. That the said Court erred in failing to hold that the Master committed error in finding that in order to produce water gas of the statutory standard of 22 candle power under the conditions 236 obtaining in a plant such as that of complainant, there is required the use per M cubic feet of gas made of approximately 4.2 gallons of gas oil of the gravity and quality now being supplied to the complainant, and that the complainant did in fact use on the average 4.19 gallons per M cubic feet of gas made during the year 1919, for the reason that the said finding is contrary to the evidence and the weight thereof. The number of gallons of gas oil required to make one thousand cubic feet of gas is variable and is oftentimes as low as 3.6 gallons, so that there can be no set rule for the number of gallons of gas oil required. The number of gallons required depends upon the quality of the oil and the skill of the operator, together with the efficiency of the machine used. The years 1918 and 1919 and the period ending May 31, 1920, were abnormal, unusual and unprecedented, and should not have been used as the basis for any calculations as to the oil necessary in making one thousand cubic feet of gas, but an average should have been taken over the years from 1910 to 1919 as indicated by reports of the complainant company filed with the defendant Public Service Commission.

33. That the said Court erred in failing to hold that the Master committed error in finding that the reasonable and necessary average cost of gas oil to complainant during the year 1919 was 6.7 cents per gallon, and the price during 1920 has been slightly higher averaging 7.283 cents per gallon for the first five months of that year, that the present price at which contracts may be made for the delivery of gas oil along side the plant of complainant company, is substantially in excess of 7.3 cents per gallon (including lighterage costs), and is in fact in excess of 10 cents per gallon; that the trend of oil prices during 1919 and 1920 has been and has remained sharply upward, and that the evidence adduced affords no reason to believe that upon the expiration of the contract under which the complainant is receiving its gas oil, during 1920, it will be possible to secure a new contract or a supply of gas oil at a price less than 10 cents per gallon. The said finding is contrary to the evidence and to the weight thereof. The years 1918 and 1919 and the first five months of the year 1920, were abnormal, unusual and unprecedented. The price paid for gas oil since 1917 is no criterion of what the price of oil will be in the future. The average cost of gas oil for the year 1919 to complainant was 6.66 cents per gallon and complainant company has an interlocking directorate with the Standard Oil Company from which it purchased all of its oil. If it were not for such interlocking directorate, it could have obtained its oil from some other company at a cost less than 238 the prices paid in the year 1919. The price of gas oil prevailing in this abnormal period should not be a guide for the

court in determining the necessary cost of manufacture of gas by complainant company. Prices have long since reached their peak and are now rapidly receding. The automobile industry which, in view of the court, competed with the gas industry for the by-products or distillates of petroleum, is now at a stand still, prices of gasoline are already receding, the stocks of gasoline on hand are larger than ever in the history of the country, and the court may take judicial notice, that the prices of all raw materials are now and will for many months to come decrease substantially until they get to a normal basis such as existed prior to the World War.

34. That the said Court erred in failing to hold that the Master committed error in finding that it was necessary for the complainant to use approximately 37 lbs. of anthracite coal of the grade recently supplied, of which approximately 34 lbs. are used in the generators and approximately 3 lbs. are used under the boilers, and that in addition there is required to be used under the boilers 19 lbs. of bituminous boiler coal or its equivalent in water gas tar, and that the necessity of compressing gas to send to Douglaston, increase the amounts of coal necessarily used by complainant, for the reason that the said finding is contrary to the evidence and the weight thereof. During the years 1910 to 1919 inclusive and including the first five months of 1920, the company did not use more than $32\frac{1}{2}$ lbs. of generator coal per M cubic feet of gas made, and did not use more than 16 lbs. of bituminous boiler coal under the boilers. Nor was there any evidence that more generator or boiler fuel were necessary by reason of the extension of gas mains to Douglaston. The court should have found that the amount of coal necessarily used depends upon the quality of the coal, the type of machine and the skill of the operator, and that no set rule can be laid down.

35. That the said Court erred in failing to hold that the Master committed error in finding that the average price of anthracite generator coal used by complainant during the year 1919 was \$8.28 per gross ton plus \$1.08 cost of cartage and handling from the dock in Flushing to the coal storage bin of the complainant, making in all \$9.36 per gross ton, and that at the present time the price of such coal is at least \$10.25 per gross ton plus \$1.25 for such cartage and handling, making in all at least \$11.50 per gross ton, for the reason that the same is contrary to the evidence and to the weight thereof. The year 1919 and the first five months of the year

1920, were an abnormal period and the prices during that period or during any of the time covered by the evidence in this case, should not be a criterion for judging the necessary cost of generator coal. The price for such coal should be based upon the average from the years 1910 to 1919 inclusive. Particularly, in view of the fact that the proof showed, and the Court may take judicial notice, that prices of all raw materials are being rapidly depressed and will continue to go down until they reach the normal prices prevalent prior to the World War. That the said period of the year 1919 and of the first part of the year 1920, was particularly abnormal as to coal, for the reason that during that period there were strikes

transportation difficulties and other abnormal conditions which prevented the sale of coal at a reasonable price. The proof further showed that the cost of cartage and handling coal from the docks to the works was excessive because such handling was interrupted during the year 1919 by construction work and the cost of handling coal would be very much less if complainant company were to construct sidings from the railroad company to the plant which would result in a saving of at least 50 cents per ton. The proof further showed that complainant company purchases all of its coal through the Consolidated Gas Company and makes no effort to obtain its coal through any other source, or at a price lower than that quoted by the company with which the Consolidated Gas Company does business.

36. That the said court erred in failing to hold that the Master committed error in finding that the average cost of boiler fuel to the complainant for the year 1919 was \$6.472 per gross ton plus \$1.08 the cost of cartage and handling from the dock in Flushing to the coal storage bins of complainant, making \$7.552 in all, and that at the present time the price of such coal is at least \$10.2479 plus \$1.25 for cartage and handling, making at least \$11.4979 in all, and that the exact extent of the increase which has taken place in 1920 does not appear in the record, for the reason that said finding is contrary to the evidence and the weight thereof, and that there is no competent proof in the case to show what the price of boiler fuel was. The year 1919 and of the first five months of 1920, were abnormal periods and the prices during said periods are no criterion of the price of boiler fuel, particularly in view of the fact that during that period the price and delivery of such coal was subject to unusual conditions due to strikes and transportation difficulties which will not occur again. Prices are rapidly receding and will soon reach the level which prevailed prior to the World War, as the Court may take judicial notice. The cost of handling is excessive by at least 50 cents a ton over what it would have been had complainant constructed a siding from the railroad to its plant. Complainant moreover purchased all of its boiler coal through the Consolidated Gas Company and made no effort to obtain better prices by making independent contracts.

37. That the said Court erred in failing to hold that the Master committed error in finding that in 1918 the cost of labor handling fuel at complainant's plant amounted to 2.08 cents and in 1919 to 2.45 cents, and at the present time to 3.13 cents per M cubic feet of gas made, for the reason that the said finding is contrary to the evidence and the weight thereof. The period taken by the Master is abnormal and unprecedented. The proofs show that the wages paid to labor are decreasing and the Court may take judicial notice, that they will decrease materially and rapidly as time goes on. A large amount of unemployment already exists, and is increasing daily, and the wages of unskilled labor such as are involved in the handling of fuel will be the first to show a marked reduction. There was moreover, no competent proof as to the wages paid in this connection.

243 38. That the said Court erred in failing to hold that the Master committed error in finding that iron mass city water and incidental minor and material supplies cost complainant in the year 1918, .83 cents and in 1919, 1.34 cents per M. cubic feet made, for the reason that the said finding is contrary to the evidence and the weight thereof. That complainant's own expert witness testified that the cost of these items was not more than 1.25 cents per M cubic feet and the total shown by complainant's books is only 1.23 cents for the year 1919. The period taken moreover, is abnormal and unprecedented, and the Court may take judicial notice that the prices of the materials herein involved are rapidly receding.

39. That the said Court erred in failing to hold that the Master committed error in finding that under the conditions in complainant's plant, there would be produced about .7 gallons of water gas tar per M cubic feet of gas made, and that such tar as of December 31, 1919, had a market or sale value of approximately 4.25 cents per gallon, that in 1919 complainant realized .7 gallons of water gas tar per M, and in 1918, .5 gallons for the reason that said finding is contrary to the evidence and to the weight thereof. There is no competent evidence of the amount of water gas tar realized as a residual, nor any evidence to support the sale value per gallon of such residual, nor any evidence of the gallons of drip oil produced. The figures found are based entirely upon hypothetical figures which were incompetent, irrelevant and of no value. The amount of water gas tar realized for the years 1918 and 1919 are matters of mere supposition, for the reason that while a great quantity of tar and drip oil was on hand, only a small part of the same had been sold during the years 1918 and 1919. The proof moreover indicated that the .8 gallons of water gas tar was realized by complainant as a residual in making one thousand cubic feet of gas. The prices found by the Master are the lowest prices received by complainant in the past year.

40. That the said Court erred in failing to hold that the Master committed error in finding that in 1918 the cost of gas making labor in complainant's plant was 4.67 cents, of repair labor 1.7 cents, of repair material 1.82 cents, and of miscellaneous works expense .37 cents per M cubic feet of gas made; that in 1919 the cost of gas making labor was 6.31 cents, of repair labor 2.66 cents, of repair material 4.69 cents, and of miscellaneous works expense .39 cents per M cubic feet of gas made; and that at the present time these items cost at least the sums shown for the year 1919, for the reason that said finding is contrary to the evidence and the weight thereof. The years 1918 and 1919 and the portion of 1920 as to which evidence was presented, were an abnormal and unprecedented period. The prices have already reached their peak and are rapidly on the decrease, particularly in these items which involve unskilled and non-union labor and products involving the use of iron or steel.

41. That the said Court erred in failing to hold that the Master committed error in finding that by reason of extension of mains into

outlying portions of the territory, the sales of complainant company will reach approximately 386,000,000 cubic feet, an increase of approximately 15%, for the reason that said finding is contrary to the evidence and the weight thereof. The proof showed on the contrary that by reason of the extension through outlying territory, the increase in sales would be at least 28%.

42. That the said Court erred in failing to hold that the Master committed error in finding that complainant's plant ought reasonably to have a reserved manufacturing capacity equal to the capacity of its largest unit (1,500,000 cubic feet per day) for the reason that said finding is contrary to the evidence and the weight thereof.

The proof shows that complainant has a reserve capacity of over 246 2,300,000 cubic feet of gas in excess of the maximum gas sent out during the severe winter of 1919 to 1920, and that said reserve capacity is more than ample for all uses of the complainant.

43. That the said Court erred in failing to hold that the Master committed error in finding that the plant, machinery and equipment used in the gas business of the complainant company, have been and are maintained in excellent operating condition, and that proper repairs, renewals and replacements have been made as and when needed and the same are now in as high a state of efficiency as if new, for the reason that the said finding is contrary to the evidence and the weight thereof. No property which is not new is as good as new. Depreciation starts to take effect as soon as a plant is put in operation and such depreciation is bound to affect the efficiency of the plant. The proof shows, moreover the cost of repairs for the year 1919 was 13 cents per M cubic feet of gas sold as against 6 cents per M for the previous year, and that the said increase of over 100% is not accounted for by any similar increase in cost of materials and labor, but on the contrary has plainly been padded for the purposes of this case. Moreover the proof showed that more money was spent in the first five months of 1920, than the amount which complainant's witness testified would be necessary to 247 make all of the property as good as new.

44. That the said Court erred in failing to hold that the Master committed error in finding that complainant company was on January 1st, 1920, and now is entitled to include in the amount upon which it was and is entitled for a fair return, the sum of \$135,000 for working capital, for the reason that the said finding is contrary to the evidence and the weight thereof. This finding of the Master is a pure guess based upon no ascertainable proof or line of reasoning. The largest amount to which complainant was entitled as working and construction capital, was not more than \$80,000, and defendants' Exhibit A-112 correctly and accurately indicates the amount of working and construction capital for the year 1904 to 1919, inclusive, upon which complainant is entitled to a fair return.

45. That the said Court erred in failing to hold that the Master committed error in not finding that the testimony of the witness Woods was entirely unworthy of credence. The so-called testimony

of the witness Woods as to the amount of materials used in the manufacture of gas was plainly at variance with similar testimony given by him in other cases, and the variations were not satisfactorily explained. Moreover, in respect to the estimates of labor costs, there were similar variations unaccounted for by the witness Woods, sought to be reconciled and the company's book figures confirmed while using 1920 high prices of labor in confirmation of the extravagant labor costs of complainant during the year 1920.

46. That the said court erred in failing to hold that the master committed error in ruling that the defendants must put in evidence the books of account of complainant company prior to the year 1919, upon which certain tabulations of the defendants were based. The master should have held that the said books were introduced in evidence under legal duress and compulsion, and that no entry in the said books can be deemed to be proof against the defendants herein.

47. That the court erred in failing to hold that the master committed error in finding that the tangible and intangible property acquired by complainant at the end of July, 1904, and still owned and used by it on January 1, 1920, was reasonably worth at the time of such acquisition at least the sum of \$670,483.86, exclusive of working capital, and that there have since been additions to this plant which, less withdrawals since August 1, 1904, and exclusive of working capital, cost \$850,389.08, making the total cost of such property at the present time at least \$1,520,877.94, and with the addition of \$135,000 for working capital, at least the sum of \$1,655,-

877.94, as of January 1, 1920, and that the fair value of the property used and needed in the manufacture and distribution of gas sold by complainant company as of January 1st, 1920, and the present time, was and is at least the sum of \$1,655,- 877.94. The said finding is not supported by the evidence, but is contrary to the evidence and to the weight thereof. There is no proof whatever in the record as to the cost or value of the respective franchises acquired by complainant or as to the amount paid, if any, to municipal authorities for the franchises claimed to be owned by it. The Master should have found that the tangible property, including plant and distributing system acquired by complainant at the time of the merger in July 18, 1904, and still owned and used by it on January 1st, 1920, reasonably cost, without depreciation, not more than \$280,108. He should further have found that there have been additions to plant, less withdrawals since August 1st, 1904, which cost not more than \$829,480.22 without allowance for depreciation. There is no basis in the record for the finding of more than \$80,000 as a reasonable allowance for working and construction capital, nor is there evidence to support a finding of more than \$6,000 for interest and taxes during construction. There is no basis in the evidence for the inclusion of an item of engineering

250 and superintendence, inasmuch as these items were included by complainant in the cost of the tangible property, and there should have been allowed on the basis of the books of complainant not more than \$10,000 for all organization, legal, general and preliminary expenses. The weight of proof is that the total intangible and tangible property of complainant company as of January 1st, 1920, was of a value of not to exceed \$939,530.

47a. That the said Court erred in failing to hold that the Master committed error in finding that \$5 per M cubic feet of gas sold fairly represents the actual and necessary investment in property used and needed for the manufacture, transmission and distribution of gas under conditions such as those in which complainant company carries on its gas operations, and that such investment made for the purposes of this case be taken to be at least that sum. There is absolutely no scintilla of evidence to support this finding of the Master, which is contrary to the entire weight of evidence and is evidently evolved from the Master's own inner-consciousness.

47b. That the said Court erred in failing to hold that the Master committed error in finding that the actual cost — of the 251 property now used by complainant company when acquired by some predecessor company in earlier years, cannot be ascertained for the reason that said finding is contrary to the evidence and the weight thereof. The complainant herein failed and refused to produce persons who were officers and familiar with the operations of the predecessor companies, and the Master erred in failing to allow the defendants to introduce documentary proof in reports made to public bodies as to the extent of the property and the rights acquired from predecessor companies, and the cost or value thereof, if any.

48. That the said Court erred in failing to hold that the Master committed error in finding that the fair and reasonable market value of the land (unimproved) owned by the complainant company and used and useful in its gas business as of January 1st, 1920, was and is at least \$45,153.20. The said finding is contrary to the evidence and to the weight thereof.

49. That the said Court erred in failing to hold that the Master committed error in finding that the cost to reproduce the plant, distributing system and other tangible property of complainant company as of January 1st, 1920, or as of the present time, was and still is, without any deduction for depreciation, at least the 252 sum of \$2,100,774.90, and in finding each of the items set out in finding marked 40, which go to make up the sum of \$2,100,774.90 aforesaid. The said finding is not supported by the evidence, is contrary to the evidence and there is no evidence tending to support it.

50. That the said Court erred in failing to hold that the Master committed error in finding that no testimony was given challenging any of the items or quantities shown in the inventory of complain-

ant, or any unit price applied therein. Some direct evidence was introduced by the defendants challenging many of these items and the credibility of the witness called to substantiate the items was attacked and practically destroyed on cross-examination by the defendants.

51. That the said Court erred in failing to hold that the Master committed error in finding that the cost to reproduce the property of the complainant as of January 1st, 1914, would be about one-half of the cost stated above as of the present time. There is no evidence to sustain such finding or to give the unit prices of labor and material prevailing as of January 1st, 1920.

253 52. That the said Court erred in failing to hold that the Master committed error in finding that as of May 1920, the actual average rate of pay per hour for labor in the complainant's works has been necessarily increased 24% over the average rate per hour for all of 1919, that the increase in the shop department has been 20%, and in the office employees 10%, and that the average increase in the prices paid for materials other than coal and oil in 1919 to May 1920, has been 10%. The said finding is contrary to the evidence and the weight thereof, and that there is no competent evidence to support it. There is moreover, proof in the record and the Court may take judicial notice, that prices of labor and materials have been rapidly receding and will continue to recede for some time to come, so that the finding as to prices on a particular day in May are immaterial and irrelevant.

53. That the said Court erred in failing to hold that the Master committed error in finding that since 1914 complainant company has paid no dividends upon any of its stock, and during 1919 and 1920 it has necessarily borrowed the money to pay the interest on its bonds, and that during 1919 and 1920 it has necessarily borrowed

money also to enable it to meet in full its current bills for
254 coal, oil and materials. The said finding is contrary to the evidence and the weight thereof. There was no proof that the stock and bonds of the company were duly authorized, or that the stock at any time represented property or capital actually invested, or that the bonds except those issued within very recent years actually represented property or capital invested. It further appears that for the entire period from August 1, 1904 to December 31, 1919, the stock, and for a long period of time the bonds, represented no property or capital of any kind, or an extremely inflated and artificial value of what little property did exist. The proof further showed that had the company been economically managed in the year 1919, and had it not undertaken excessive and unnecessary expenditures, it could easily have paid the interest upon its bonds without borrowed money. Furthermore, the tremendous increase in business which complainant's own witnesses foretold for the year 1920, together with the rapidly falling prices of labor and materials will make it easily possible for the complainant company if properly managed to pay interest upon its bonds for the entire year 1920.

54. That the said Court erred in failing to hold that the Master committed error in finding that the Consolidated Gas Company of New York apparently does not own any of the bonds of the complainant company, on the ground that there is no proof in the case as to the present ownership of such bonds.

255 55. That the said Court erred in failing to hold that the Master committed error in finding that the complainant company has complied with the provisions of chapter 125 of the laws of 1906, with reference to the candle power and with requirements of law regarding pressure, for the reason that the said finding is contrary to the evidence and the weight thereof, and there is no evidence tending to support it. The proof shows that in 1919 there were 94 violations, in 1918 130 violations, in 1917 132 violations and in 1916 145 violations of the statute with reference to candle power. The proof further shows that during the years 1919 and 1920, the following flagrant violations of the candle power requirements were committed:

Date	No. of violations, candle power.
1919.	
Jan. 20.....	18,54
" 22.....	18,88
" 23.....	18,52
Feb. 3.....	19,08
March 24.....	16,20
April 28.....	19,26
July 9.....	18,08
Sept. 19.....	19,41
" 24.....	18,70
Dec. 4.....	19,38
" 5.....	19,59
" 19.....	19,09
1920.	
Jan. 15.....	19,05
Feb. 2.....	19,14
" 17.....	19,07
" 28.....	17,24

56 56. That the said Court erred in failing to hold that the Master committed error in finding that various matters discussed in his so-called opinion and the findings of fact and conclusions of laws set out in such opinion, are to be deemed a part of the report which he is directed to make and have the same force and effect as though physically incorporated in such report. The said finding is error in law inasmuch as the filing of said opinion is not authorized or justified in this case, and this case should be sent back to another Master to submit a report in accordance with the instructions of the court.

57. That the said Court erred in failing to hold that the Master exceeded his instructions and his jurisdiction insofar as he recom-

mends in finding 52 that the statute herein questioned be declared unconstitutional.

58. That the said Court erred in failing to hold that the Master committed error in finding that the increase of sales for the year 1920 would be only 15%, and that the decrease of 4 cents per M in distribution expenses caused by this increase of production, would be more than absorbed by the increased cost of labor and materials, for the reason that said finding is contrary to the evidence and the weight thereof. The proof showed that the increase in the production and sales of gas would be at least 28%, that the decrease in gas would be far greater than 4 cents per M cubic feet sold, and there

is no evidence upon which can be based a conclusion that
257 this decrease in distribution expenses will be absorbed by
the increased cost of labor and materials. On the contrary,
the proof shows and the court may take judicial notice, that prices
are rapidly decreasing as are the wages of labor, so that the actual
cost of manufacturing and distributing gas during the year 1920
will be far below that of 1919.

59. That the said Court erred in failing to hold that the Master committed error in finding in his opinion that the testimony given by Mr. Woods, one of the expert witnesses for complainant, confirm the operating results shown by the books of complainant company, and that the operating records of complainant company closely accord with the sworn expert opinion of Mr. Woods, for the reason that the said finding is contrary to the evidence and the weight thereof. The testimony which he had given in other cases was so palpably altered to suit the exigencies of this case, the records of the company were so full of irregularities and unexplained increases, that the court should have found that both the records of complainant and the testimony of Mr. Woods were unworthy of credence, and the figures presented should have been carefully analysed and reduced to the utmost extent, instead of being taken as conclusively true without proper analysis as was done by the Master.

258 60. That the said court erred in failing to hold that the master committed error in finding that the operating records of the complainant company have been honestly and accurately kept, and accurately reflected efficient and reasonable operating results, for the reason that the said finding is contrary to the evidence and there is no evidence tending to support it.

61. That the said court erred in failing to hold that the master committed error in finding that, as a matter of law, in respect to the property of complainant company no deductions should be made for depreciation. The courts have consistently held that all physical property which may be involved in a rate litigation is subject to depreciation as soon as it is put in service and it was reversible error for the master not to follow the unvaried decisions of the courts in this matter.

62. That the said court erred in holding that the actual cost of the tangible property aggregates \$1,130,497.08 and that this is the

absolute minimum of actual investment and is the minimum of reproduction value, for the reason that the said court did not, in this finding, take into account and allow for any accrued depreciation.

259 & 260 63. That the said court erred in holding that the actual cost of the tangible property aggregates \$1,130,497.08 and that this figure is uncontested, for the reason that said finding is contrary to the evidence and the weight thereof.

64. That the said court erred in failing to hold that the master erred in admitting in evidence complainant's Exhibit 77, a tabulation offered by Witness Woods to prove so-called hypothetical cost of making gas, for the reason that said tabulation was incompetent, immaterial, irrelevant and not properly proven.

65. That the said court erred in failing to hold that the master committed error in failing to dismiss the complaint at the termination of complainant's case for the reason that complainant failed to prove the cost of its property or to introduce any evidence as to its property used in the public service, except an estimate of the reproduction cost new of said property.

Dated, December —, 1920.

CHARLES D. NEWTON,
Attorney-General of the State of New York.
WILBER W. CHAMBERS,
Solicitor for Defendant Charles D. Newton.
TERRENCE FARLEY,
Solicitor for Defendant Alfred M. Barrett.
WILLIAM H. VAN STEENBERGH,
Solicitor for Defendant Denis O'Leary.

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XII.

By the Honorable One of the Judges of the District Court of the United States for the Southern District of New York to the New York and Queens Gas Company, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be held in the city of Washington, D. C., in the District of Columbia, on the 15 day of January 1921, pursuant to an appeal filed in the clerk's office of the District Court of the United States for the Southern District of New York, wherein Charles D. Newton, as Attorney-General of the State of New York, Denis O'Leary, as District Attorney of Queens County, state of New York, and Alfred M. Barrett, constituting the Public Service Commission of the State of New York, for the First District, are appellants, and to show cause, if any there be, why the decree entered on the 19th day of November, 1920, in the United States District Court for the Southern District of New York, should not be corrected and reversed and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city

262 of New York, in the district above named this 17 day of December in the year of our Lord, one thousand nine hundred and twenty and of the Independence of the United States the One Hundred and Forty-fifth.

JULIUS M. MAYER,
*United States District Judge for the
Southern District of N. Y.*

263 [Endorsed:] District Court of U. S., Southern District of N. Y., New York & Queens Gas Company, Complainant vs. Charles D. Newton, as Attorney-General of the State of N. Y., Denis O'Leary, Dist. Atty., Queens County, et al., Defendants. Citation. Wilber W. Chambers, Solicitor for deft. Charles D. Newton, Attorney-General, Capitol, Albany, N. Y.

264 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated and agreed, by and between the parties hereto that the record on appeal to the Supreme Court of the United States herein shall consist of the following papers, towit:

- (1) Pleadings, decree, etc.
 - a. Bill of complaint.
 - b. Subpoena.
 - c. Marshal's returns.
 - d. Answers of defendants.
 - e. Order appointing special master.
 - f. Order of substitution.
 - g. Report and opinion of special master.
 - h. Defendants' exceptions to special master's report, and opinion.
 - i. Complainant's exceptions to special master's report and opinion.
 - j. Notice of final hearing.
 - k. Opinion of Judge Mayer and decree.
 - l. Petition and allowance of appeal.
 - m. Assignment of errors.

n. Citation.

(2) Testimony in extenso.

(3) Exhibits:

265 (a) Complainant's exhibits
Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive,
64, 65, 69, 71 to 86, inclusive, 89 to 99, inclusive, and 105 to 115,
inclusive.

(b) Defendants' exhibits A to K, inclusive, O to V, inclusive, and
Y, and Numbers A-8 to A-64, inclusive, A-68 to A-70, inclusive, and
A-72, A-89 to A-96, inclusive, A-97 to A-112, inclusive.

Dated, April 1, 1921.

WILBER W. CHAMBERS,
Solicitor for Defendant Newton,
TERENCE FARLEY,
Solicitor for Defendant Barrett,
JOHN P. O'BRIEN,
Solicitor for Defendant Wallace,
SHEARMAN & STERLING,
Solicitor for Complainant.

266 District Court of the United States, Southern District of New
York.

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Alfred M. Barrett, Constituting the Public Service Commission of
the State of New York for the First District, and Dana Wallace,
District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

The foregoing record, consisting of the following pleadings and
decree,

- (1) Pleadings, decree, etc.
 - (a) Bill of complaint.
 - (b) Subpoena.
 - (c) Marshal's returns.
 - (d) Answers of defendants.
 - (e) Order appointing special master.
 - (f) Order of substitution.
 - (g) Report and opinion of special master.
 - (h) Defendants' exceptions to special master's report and opinion.
 - (i) Complainant's exceptions to special master's report and opinion.

- (j) Notice of final hearing.
- (k) Opinion of Judge Mayer and decree.
- (l) Petition and allowance of appeal.
- (m) Assignment of errors.
- (n) Citation.
- (2) Testimony in extenso.

(3) Exhibits:

a. Complainant's Exhibits Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive, 64, 65, 69, 71 to 86, inclusive, 89 to 99, inclusive, and 105 to 115, inclusive.

b. Defendants' exhibits A to K, inclusive, O to V, inclusive, 267 and Y, and numbers A-8 to A-64, inclusive, A-68 to A-70, inclusive, A-72, A-89 to A-96, A-97 to A-112, inclusive, hereby approved as a true and complete and properly prepared record of the evidence in the above cause.

Dated, New York, April 4, 1921.

JULIUS M. MAYER,
U. S. District Judge.

268 [Endorsed:] District Court of U. S., Southern District of N. Y. Charles D. Newton, as Attorney-General of the State of New York, et al., Appellants, vs. New York & Queens Co., Respondent. Stipulation. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. Address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. Address, #49 Lafayette St., New York City. John P. O'Brien, Corporation Counsel, Solicitor for Applt. Wallace, Municipal Bldg., New York City.

269 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, as District Attorney of Queens County, Appellants.

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated, consented and agreed between the solicitors for the respective parties above named that the testimony taken before the special master herein, as now printed and on file with the clerk of the United States District Court for the Southern District of New York, shall be the record on appeal herein and the provisions of paragraph "B" of Equity Rule 75 in regard to the reduction of

the record and preparation of the case on appeal be and they hereby are waived.

Dated, New York, April 4, 1921.

WILBER W. CHAMBERS,
Solicitor for Appellant Newton.
TERENCE FARLEY,
Solicitor for Appellant Barrett.
JOHN P. O'BRIEN,
Solicitor for Appellant Wallace.
SHEARMAN & STERLING,
Solicitors for Respondent.

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271 [Endorsed:] District Court of U. S., Southern District of N. Y., Charles D. Newton, as Attorney-General of State of N. Y., et al., Appellants, vs. New York & Queens Gas Company, Respondent. Stipulation re: Printing Testimony in Record, &c. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. address, #49 Lafayette St., New York City. John P. O'Brien, Solicitor for Applt. Wallace, Office & P. O. Address, Municipal Bldg., New York City.

272 District Court of the United States, Southern District of New York.

CHARLES D. NEWTON, as Attorney-General of the State of New York; Alfred M. Barrett, Constituting the Public Service Commission of the State of New York for the First District, and Dana Wallace, District Attorney of Queens County, Appellants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent.

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in the above entitled matter, as agreed on by the parties, being the pleadings and decrees as follows:

- (1) Pleadings, decree, etc.
 - (a) Bill of complaint.
 - (b) Subpoena.
 - (c) Marshal's returns.
 - (d) Answers of defendants.
 - (e) Order appointing special master.
 - (f) Order of substitution.

- (g) Report and opinion of special master.
 - (h) Defendants' exceptions to special master's report and opinion.
 - (i) Complainant's exceptions to special master's report and opinion.
 - (j) Notice of final hearing.
 - (k) Opinion of Judge Mayer and decree.
 - (l) Petition and allowance of appeal.
 - (m) Assignment of errors.
 - (n) Citation.
- (2) Testimony in extenso.
- (3) Exhibits:
- a. Complainant's Exhibits Numbers 17, 18, 19, 47 to 51, inclusive, 57 to 62, inclusive, 64, 65, 69, 71, to 86, inclusive, 89 to 99, inclusive, 105 to 115, inclusive.
 - b. Defendants' exhibits A to K, inclusive, O to V, inclusive, and Y, and Numbers A-8 to A-64, inclusive, A-68 to A-70 inclusive, A-72, A-89 to A-96, A-97, to A-112, inclusive.

Dated, New York, April 1, 1921.

WILBER W. CHAMBERS,
Solicitor for Appellant Newton.
TERENCE FARLEY,
Solicitor for Appellant Barrett.
JOHN P. O'BRIEN,
Solicitor for Appellant Wallace.
SHEARMAN & STERLING,
Solicitors for Respondent.

274 UNITED STATES OF AMERICA,
Southern District of New York, ss:

CHARLES D. NEWTON, as Attorney-General of the State of New York;
Alfred M. Barrett, Constituting the Public Service Commission for
the First District, and Dana Wallace, as District Attorney of
Queens County, Appellant-Defendants,

vs.

NEW YORK & QUEENS GAS COMPANY, Respondent-Complainant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of April in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-fifth.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX GILCHRIST, JR.,
Clerk.

275 [Endorsed:] District Court of U. S., Southern District of N. Y. Charles D. Newton, as Attorney-General of the State of New York, et al., Appellants, vs. New York & Queens Gas Co., Respondent. Stipulation. Clerk's Certificate as to Appeal Record. Wilber W. Chambers, Solicitor for Applt. Newton, Office & P. O. address, Capitol, Albany, N. Y. Terence Farley, Solicitor for Applt. Barrett, Office & P. O. address, #49 Lafayette St., New York City. John P. O'Brien, Corporation Counsel, Solicitor for Applt. Wallace, Office & P. O. Address, Municipal Bldg., New York.

1 United States District Court, Southern District of New York,

In Equity,

NEW YORK & QUEENS GAS COMPANY, Complainant,

vs.

CHARLES D. NEWTON, as Attorney General of the State of New York; Dennis O'Leary, as District Attorney of the County of Queens, State of New York, and Lewis Nixon, Public Service Commissioner of the State of New York, First District, Defendants.

Before Abraham S. Gilbert, Special Master.

New York, July 15, 1919.

Appearances:

Shearman & Sterling, Solicitors for Complainant.
William L. Ransom,
Charles A. Vilas,
J. H. Goetz,
Of Counsel.

Charles D. Newton, Attorney General of the State of New York.
Wilber W. Chambers, Deputy Attorney General, of Counsel.
W. H. Van Steenburgh, Solicitor for Dennis O'Leary, District Attorney for the County of Queens.

Terence Farley, Solicitor for the Public Service Commission.

Adams & Chambers appointed Stenographers.

2 The Master: We will take up the New York & Queens case first.

Mr Ransom: I would suggest an adjournment of a month.

Mr Chambers: No, we will not be through with this case.

The Master: We can adjourn it again at the end of a month, Mr. Chambers, if necessary.

Mr. Chambers: If he stipulates that it is to be held until the conclusion of this case.

The Master: It is going to be held. The New York and Queens case will stand adjourned over for one month, it being the understanding that I will not take up the New York and Queens case until I get through with the Consolidated case.

Adjourned to Friday, August 15, 1919, at 10:30 A. M.

New York, August 15, 1919.

Adjourned to Monday, September 15, 1919, with the same understanding.

New York, September 15, 1919.

Adjourned to Wednesday, October 15, 1919, with the same understanding.

New York, October 15, 1919.

Adjourned to Saturday, November 15, 1919, with the same understanding.

New York, November 15, 1919.

Adjourned to Monday, December 15, 1919, with the same understanding.

New York, December 15, 1919.

Adjourned to Thursday, January 15, 1920, with the same understanding.

New York, January 15, 1920.

3

Adjourned to Monday, February 16, 1920, with the same understanding.

New York, February 16, 1920.

Adjourned to Monday, March 15, 1920, with the same understanding.

New York, March 15, 1920.

Adjourned to Thursday, April 15, 1920, to meet at the office of the Special Master, No. 43 Exchange Place, New York City, with the same understanding.

NEW YORK & QUEENS GAS Co.

vs.

NEWTON et al.

Met pursuant to adjournment.

New York, April 15, 1920.

Present:

The Master.

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Charles J. Tobin, of Counsel for Defendant Newton, etc.

Mr. Van Steenburgh, Solicitor for Defendant O'Leary, etc.

Mr. Neumann, of Counsel for Defendant Nixon, etc.

(Informal discussion off the record.)

The Master: Is any one going to be associated with you, Mr. Van Steenburgh?

Mr. Van Steenburgh: I don't know whether Mr. Morris will be here or not.

The Master: I have been trying to get an idea of how long this case was going to take and what the case was about. I had about decided to adjourn it until the 15th of May.

4 Mr. Ransom: That would be quite an injustice to the complainant.

The Master: Then you had better get some other master appointed. I don't want to do any injustice to anybody.

Mr. Ransom: Wouldn't it be possible to go on some day next week? I think we can put in our direct case in a very short time. If we could have one afternoon next week, or morning, I think we could make a substantial degree of headway. Then after we get in these things, our exhibits and our inventory and things of that sort, if your Honor then felt that some adjournment to a day early in May was reasonable, it would be a little different. We could then go over outright to the 15th of May, and in the meantime our inventory would be in.

The Master: What inventory, a detailed inventory?

Mr. Ransom: We have a very detailed inventory.

The Master: Has it been furnished to the other side?

Mr. Ransom: Yes, it has been furnished to the defendants.

Mr. Tobin: We have not got it yet.

The Master: You saw you have not got it?

Mr. Tobin: We haven't our full data from the other side as yet.

Mr. Ransom: There is not anything I can imagine we have not furnished them, because Judge Mayer's order was only signed yesterday.

The Master: I will tell you what I will do: Will you require any large room? Will there be any great number of people in attendance, as on the Consolidated case?

Mr. Ransom: No.

5 The Master: Then we can hold the hearing in the library here, and if you are willing to be interrupted by telephones and other things of that sort, I will set it down for some afternoon next week.

Mr. Tobin: I would like to make a statement. I have just come into this case. As you know, Mr. Chambers has been trying practically all these cases as representing the Attorney General. I haven't even got a picture of it, and as he told me yesterday before I left Albany, all the information we have asked from the Company has not as yet been supplied, so it is going to be an extreme hardship for me to go on next week. If it can be put over some day beyond next week I can stick right here, because it is Mr. Chambers' plan to finish up his work in the Consolidated Gas case. He is working on it now, and he has also taken on another case, and has turned this case over to me, and he intends to sit in this case occasionally as we go along and give such help as I may need. I would like to put it over until some day beyond next week.

Mr. Ransom: What I mean is, we could go ahead some day next week and put in the formal proof on franchises and deeds and put in the inventory—the inventory has been furnished—revenues and expenses, cost of distribution and formal exhibits, of which your Honor is doubtless very familiar. Those are ready and they could be put in and cross examination deferred. It is true that under Judge Mayer's order signed yesterday we have to furnish the data of installation and age of the property.

The Master: What is your capacity over there?

Mr. Ransom: About 2,000,000.

The Master: What do you figure it is worth?

Mr. Ransom: You mean the whole plant?

6 The Master: Yes, how much do you say it is worth, the water gas plant, a 2,000,000 water gas plant?

Mr. Ransom: The plant?

The Master: Yes, and the land on which it stands. How much do you claim that is worth?

Mr. Ransom: The total property of the company?

The Master: Including distributing mains.

Mr. Ransom: Including everything, the total value of the property which we have shown as of January 1st, 1920, exclusive of the going value is \$2,907,062.

The Master: For a 2,000,000 capacity plant?

Mr. Ransom: Yes, just under three million dollars.

The Master: What about the plant alone?

Mr. Ransom: Our plant alone practically is worth \$561,000.

The Master: The water gas plant?

Mr. Ransom: Yes, the water gas plant.

Mr. Tobin: Once we get started it is not going to take us long.

Mr. Neumann: Speaking for the defendant Nixon, I might say this: That it will be impossible for our statistical bureau to get anywhere near ready in the short space of time we have in this case.

The Master: Why not?

Mr. Neumann: They have been working and are working on the Company's books—that is through no fault of the men working on them.

Mr. Ransom: That is a matter of the defendants' case, not the complainant's.

The Master: How long have these books been accessible to the defendants?

7 Mr. Ransom: They went through them last September, and we confirmed that by letter on the 1st of October, 1919.

Mr. Neumann: And you have kept our bureau busy on the Consolidated Gas Company's case ever since. As Judge Mayer said upon the argument the other day, these defendants have a certain amount of capacity and they cannot go beyond it, and you know that better than any one else because you were connected with the Commission yourself, and we are in just this position, Judge Ransom, that if you force this trial on now the result will be that when it comes to the defendants' case we will have to ask for a long time to prepare it. Do you want to force us on now, or give us sufficient time to get ready so that the case can go forward?

The Master: I want to ask Mr. Van Steenburgh this: Have you had a chance to prepare?

Mr. Van Steenburgh: I haven't had as much chance as I want to have to prepare. It occurs to me, listening to this discussion, that as a practical proposition, Mr. Master, it would be just as well to put it over beyond another week as the Attorney General's office has asked, and then go to it and make as much progress as we possibly can, and not to take two bites out of the cherry, and do something some day and something else some other time.

The Master: Have you put any accountants on these books?

Mr. Van Steenburgh: I could tell better after I have heard some of the complainant's case.

Mr. Ransom: That is why I want to put it in now.

The Master: I don't know why we have to hear the complainant's case first. They have to show how much it costs to make the gas.

8 Mr. Van Steenburgh: They have to show in the first place the present value of their plant, what it is worth as a going concern, and in addition to that we have a right to go in and see whether that condition or claim of theirs is justified by the proof they offer.

The Master: I have been eight or nine or ten months in this Consolidated case and I think I know something about it. Without knowing anything about this case, I think I should know what goes into a thousand feet of gas, and what it costs to make it. Am I right?

Mr. Van Steenburgh: Yes.

The Master: Have you prepared anything on that?

Mr. Van Steenburgh: Not yet.

The Master: Why not?

Mr. Van Steenburgh: This is not the only thing I have in my office to attend to.

The Master: Haven't you employed some expert or engineer to show what goes into a thousand feet of water gas?

Mr. Van Steenburgh: I can tell you that better later on.

The Master: I am going to take whatever proof Judge Ransom wants to offer next week, and then I will dispose of further questions.

Mr. Tobin: I cannot be here next week, if the Master please.

The Master: Then let somebody else be here.

Mr. Tobin: I just came in today.

The Master: Where is your home?

Mr. Tobin: My home is in Albany.

Mr. Neumann: This is over the objection of the counsel for the Public Service Commission.

Mr. Ransom: Can it be next week Friday?

The Master: I think the latest day possible next week. I 9 think Friday, so as to avoid the possibility of getting mixed up in the Court of Appeals.

Mr. Tobin: Could you not possibly put it on the first part of the next week?

Mr. Ransom: I will consent to the following Monday if that will be any accommodation to Mr. Tobin. If you put it down for the 26th I will consent to that.

The Master: All right, make it on the 26th at 2 o'clock, and in the meantime I will look at this order of Judge Mayer's.

Mr. Ransom: It seems to me that if we are going to have a short adjournment now, they ought to go ahead with the inventory and the cost of production and distribution and revenues and expense statements and things like that that we have furnished to them.

Mr. Tobin: Your information is not complete yet.

Mr. Ransom: The only thing we lack is the installation property.

The Master: I have set it down for the 26th at 2 o'clock.

Mr. Neumann: On the understanding that we will have some time to prepare our case?

The Master: On the understanding that this case is going to proceed at 2 o'clock on the 26th.

Mr. Neumann: Then I would like to have my objection noted to the case going on, because I want to say our office will not be ready to put in the defendant Nixon's case for at least two months.

The Master: Then I am inclined to think that the defendant Nixon won't put in any case.

Mr. Neumann: I respectfully except.

Mr. Tobin: Then you will give an opportunity to the company to give the information referred to?

Mr. Ransom: You have the papers now.

10 Mr. Tobin: That was not the point you made first, Judge Ransom. You were very careful to say you wanted to put these in to give us an opportunity.

Mr. Ransom: Yes.

Mr. Tobin: Then it might be in the discretion of the Master to let us go on. That is the way you put it.

The Master: Let me get this record straight: I am setting this

matter down for April 26, at 2 P. M., at which time I shall expect counsel for the complainant to put in all the documentary evidence that he can possibly have ready at that time.

Mr. Ransom: It can all be ready.

The Master: Before that time I *except* Judge Ransom to comply with the order of Judge Mayer of April 5, 1920, in so far as he expects to comply with it, and I will on that day hear any argument about the compliance of that order, and I will then make such certificate as I think the situation warrants.

Mr. Ransom: I might say with respect to the item with which we have not complied, it is that relating to the installation or acquisition or the age of the property. That item we expect to comply with in a few days.

The Master: I will dispose of the compliance or non-compliance of Judge Mayer's order on the 26th. At that time, when all of this documentary proof is in and the question of the compliance with Judge Mayer's order is out of the way, I will have a little better idea as to what ought to be done with reference to an adjournment for the purpose of permitting counsel to prepare for trial. For the information of counsel I might say I am not going to give any two months' adjournment. We might as well understand that now.

This is a case that apparently involves a very small plant,
11 comparatively speaking, and if the Public Service Commission force is not adequate to handle it they can get some one else.

Mr. Neumann: I respectfully except to that ruling.

Mr. Tobin: I take it that carries with it that on the introduction of the documentary evidence you are going to give us sufficient time after that is introduced to cross examine on it?

Mr. Ransom: I want to say that almost all of the documentary evidence that we will produce has been furnished to the defendants at least two weeks ago; and so far as the checking of the inventory and the checking of the statements of account is concerned, that is already in progress so far as the defendant Commission is concerned and ought to be in progress so far as the other defendants are concerned.

The Master: I won't require any cross examination on the 26th, if that is what you want, and I will expect Judge Ranson to have his documents ready at that time.

Adjourned to Monday, April 26, 1920, at 2 o'clock P. M.

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NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, etc., et al.

Before Abraham S. Gilbert, Special Master.

New York, April 26, 1920.

Met pursuant to adjournment.

Present:

William L. Ransom, Charles A. Villas and J. H. Goetz, of Counsel for Complainant.

W. W. Chambers, Charles J. Tobin and Clarence R. Cummings, of Counsel for defendant Newton.

Ely Neumann and Edward M. Deegan, of Counsel for defendant Lewis Nixon, Public Service Commissioner.

William J. Morris, Jr., and W. H. Van Steenburgh, of Counsel for defendant Dennis O'Leary.

Mr. Tobin: If your Honor please, we ask for a dismissal of the complaint on the ground that it does not show sufficient facts to constitute a cause of action.

Second, that it is not affirmatively shown that the complainant has complied with the statute. We deem that they should show—

The Master: You mean with reference to candle power?

Mr. Tobin: Yes, sir.

Mr. Chambers: And other things.

Mr. Tobin: They have not shown what the candle power is required by the statute, and also as to the quality of the gas. We ask that the complaint be dismissed.

13 The Master: Motion denied.

Mr. Tobin: Exception.

Mr. Neumann: May I add that the complainant has failed to comply with the statutory requirements—

1. As to price.

2. As to pressure.

3. As to candle power.

And, upon the further ground that the complaint fails to allege that the company has been economically and efficiently managed.

Mr. Chambers: We join in that objection.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Morris: If your Honor please, the defendant O'Leary joins in that, although what I have to say now possibly seems to be appropriate for a later date. I represent Dennis O'Leary as District Attorney of the County of Queens. I am one of the Assistants there, and as I have stated to counsel, we are in no position, in view of the number of men we have, and our finances—it would be impossible

for us as a District Attorney's office to give up our time entirely to these gas rate cases. I have formally requested the Corporation Counsel's office to come in in the seven cases in which we are at the present time. I have taken the matter up with the Mayor with the idea of having him designate the Corporation Counsel to represent the District Attorney. In view of that fact, if it would not be too much of a hardship on all the attorneys and the witnesses who have been brought here, I would ask your indulgence for an adjournment so that the Corporation Counsel can be formally brought into it by stipulation and by request.

The Master: I cannot do that. We are only going to take documentary proof today.

14 I have denied the motion to dismiss. In this case motions made by any one defendant will be deemed to have been made by all the defendants, so it will not be necessary for all defendants to repeat the same grounds of motion. If, when one defendant has made a motion of any kind, other defendants desire to add to it, I will take anything that is to be added, but there will be no necessity for repeating the same ground again.

The motions to dismiss on all the grounds stated by counsel are denied, with an exception to each defendant.

Mr. Chambers: The defendant Newton is not ready for trial.

The Master: You are ready enough to allow them to put in this documentary proof.

Mr. Chambers: Another thing, they have not served us with the information required by the bill of particulars.

The Master: I will take that up later. I am going to let Mr. Ransom put in his formal documentary proofs, and then I will take up the question of a bill of particulars or other data.

Mr. Ransom: I offer in evidence certified copy of the Articles of Incorporation of the New York & Queens Gas Company. If counsel are willing, I will have copies marked instead of originals.

The Master: Is there any objection to that procedure, marking copies instead of originals?

Mr. Chambers: No, not as to this paper.

Mr. Neumann: Will counsel make the statement that the copies are exact copies of the originals?

Mr. Ransom: They are.

Mr. Neumann: We do not want a repetition of what happened in the Consolidated case.

15 Certified copy of Articles of Incorporation received in evidence and marked Complainant's Exhibit 1.

Mr. Ransom: The next is certified copy of the Certificate of Incorporation of the Flushing Gas Light Company.

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: What is the point?

Mr. Chambers: Why not offer the Certificate of Incorporation of the New York & Richmond?

Mr. Neumann: Where is the connection?

The Master: The first paper that was offered was the charter of the New York & Queens. Now, you are offering the charter of the Flushing Company?

Mr. Ransom: Yes, one of the companies from which franchises came into the possession of the New York & Queens Company.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 2.

Mr. Ransom: Next I offer in evidence Certificate of the existence of the Flushing Gas Light Company, extension from October 1, 1875, to October 1, 1895. That document also includes the extension of the same company from October 1, 1895, to October 1, 1915.

Mr. Chambers: We object to that upon the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Paper received in evidence and marked Complainant's Exhibit 3.

16 Mr. Tobin: It would save some time to us if we had had copies of what they are going to offer, instead of having them put in here in this way.

The Master: Based on my experience in the Consolidated case I think the best way to do is to take it all in.

Mr. Ransom: Next I offer in evidence Certificate of Incorporation of the Flushing Gas & Electric Light Company.

Mr. Tobin: We object to that as incompetent, irrelevant and immaterial.

Mr. Neuman: I object to it on the same grounds as stated.

The Master: Objection overruled. I shall assume that there is some connection.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 4.

Mr. Ransom: Next I offer in evidence Certificate of Incorporation of the New York & Queens Gas & Electric Company.

Mr. Chambers: I make the same objection as last stated.

The Master: Same ruling.

Mr. Chambers: Exception.

Paper received in evidence and marked Complainant's Exhibit 5.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the College Point Gas Company.

Mr. Tobin: I object to it on the same grounds as before.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

17 Paper Received in evidence and marked Complainant's Exhibit 6.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the Whitestone Gas Company.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit 7.

Mr. Ransom: I next offer in evidence Certificate of Incorporation of the Long Island Illuminating Company.

Mr. Tobin: I object on the same grounds as before.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 8.

Mr. Ransom: I offer in evidence Certificate of Incorporation of the Newtown & Flushing Gas Company.

Mr. Tobin: I object on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 9.

Mr. Ransom: I offer in evidence certified copy of a deed dated July 20, 1897, from the Flushing Gas Light Company to the

18 office of the Clerk of the County of Queens, Liber 1158, page 402, on July 28, 1897.

Mr. Tobin: I object to it as incompetent, irrelevant and immaterial, and no connection shown at the present time. There is no evidence of title.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Cummings: Do you offer the whole instrument?

Mr. Ransom: Yes.

Mr. Cummings: For all purposes?

The Master: The objection is overruled.

Paper received in evidence and marked Complainant's Exhibit 10.

Mr. Ransom: I offer in evidence a certified copy of Certificate of Merger of the Flushing Gas & Electric Light Company with and into the New York & Queens Gas & Electric Company, dated June 16, 1899, filed in the office of the Secretary of State of the State of New York, on June 17, 1899.

Mr. Tobin: We make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 11.

Mr. Ransom: I offer in evidence original assignment of the New York & Queens Gas & Electric Company to the Newtown & Flushing Gas Company of all its franchises in the Borough of Queens, dated July 23, 1900.

Mr. Tobin: I make the same objection. I can't see any occasion for the introduction of that.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

19 Mr. Neumann: Exception.

Received and marked Complainant's Exhibit 12.

Mr. Ransom: I offer in evidence original assignment of the White-stone Gas Company to the Newtown & Flushing Gas Company of the Newtown & Flushing franchises, this assignment being dated July 20, 1900.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 13.

Mr. Ransom: I offer in evidence certified copy of Certificate of the Merger of the College Point Gas Company into the Newtown & Flushing Gas Company, dated March 22, 1901.

Mr. Tobin: I object to it on the same grounds.

Mr. Neuman: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 14.

Mr. Ransom: I offer in evidence certified copy of the merger of the Newtown & Flushing Gas Company with and into the New York & Queens Gas Company, dated July 18, 1904.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 15.

20 Mr. Ransom: I ask that there be considered in evidence the acts of the Legislature of the State of New York which became a law February 16, 1848, entitled, "An Act to Authorize the Formation of Gas Light Companies."

The Master: Your request is noted.

Mr. Ransom: I think it ought to be considered in evidence as an exhibit.

The Master: Why?

Mr. Ransom: Because while the matter is not free from doubt statutes that come within the class of somewhat special acts, I think, need to be in evidence.

The Master: It can't do any harm to consider it and give it a number. We will call it Exhibit 16.

Mr. Tobin: I make the same objection.

Mr. Neumann: The same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Act of February 16, 1848, considered in evidence as Exhibit 16.

Mr. Ransom: I make the same request with respect to Section 15, Article 2, of the Stock Corporations Law relating to the merger and consolidation of gas companies.

The Master: That is a general act.

Mr. Ransom: I think perhaps it is—

The Master: I will not cumber the record with it.

Mr. Ransom: I make the same request regarding Chapter 566 of the Laws of 1890, Section 60 and Section 61, now known as Article 7 of the Transportation Corporations Law.

Mr. Tobin: I object to that.

The Master: They are general statutes.

21 Mr. Ransom: I ask that there be considered in evidence Chapter 125 of the Laws of 1908, which is the statute here under attack.

The Master: I will mark that as Exhibit 17.

Mr. Neumann: That means the whole and every part of that statute?

The Master: I assume so.

Mr. Neumann: You are offering the whole, are you?

Mr. Ransom: I am offering it as a whole.

Chapter 125 of the Laws of 1906 received in evidence and considered marked Exhibit 17.

Mr. Ransom: I offer in evidence Chapter 612 of the Laws of 1916, which amended in certain respects Chapter 125 of the Laws of 1906.

The Master: We will consider that as Exhibit 18.

Chapter 612, Laws of 1916, received in evidence and considered marked Exhibit 18.

Mr. Ransom: I also offer in evidence Chapter 666 of the Laws of 1917, which in certain respects amended Chapter 125 of the Laws of 1908.

The Master: Consider that as Exhibit 19.

Chapter 666, Laws of 1917, received in evidence and considered marked Exhibit 19.

Mr. Tobin: What bearing has that?

Mr. Ransom: I think it will appear from an examination of the complaint and the statute.

I offer in evidence the original franchise from the Commissioners of Highways of the Town of Newtown, County of Queens, State of New York, to Charles F. Smith, dated April 21, 1897.

Mr. Tobin: I make the same objection.

Mr. Neumann: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Tobin: Exception.

22 Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 20.

Mr. Ransom: I offer in evidence original assignment of the franchise constituting the exhibit last received, from Charles F. Smith to the New York & Queens Gas & Electric Company, dated June 16, 1899.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 21.

Mr. Ransom: I offer in evidence the original franchise from William L. Cornell and others, Commissioners of Highways of the Town of Flushing, County of Queens, State of New York, to the Flushing Gas Light Company, dated May 1, 1897.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 22.

Mr. Ransom: I offer in evidence certificate showing a resolution adopted by the Trustees of the Village of Flushing at a meeting held August 27, 1889.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 23.

23 Mr. Ransom: I offer in evidence an original agreement made November 23, 1897, between the Flushing Gas & Elec-

tric Light Company, and the Village of Flushing.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 24.

Mr. Ransom: I offer in evidence certified copy of a franchise granted by the Village of Whitestone to the Flushing Gas & Electric Light Company, certified to by the Assistant Deputy Comptroller of the City of New York as passed on December 30, 1897.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 25.

The Master: Are you claiming as part of your rate base a value to these franchises?

Mr. Ransom: Yes.

Mr. Neumann: I want to make the additional objection that the paper does not on its face show any authenticity.

Mr. Ransom: I offer in evidence a certified copy of a resolution granting a franchise from the trustees of the town of Flushing, County of Queens, to the College Point Gas Company, at a meeting held on Saturday, May 5, 1866, certified to by the Deputy Comptroller of the City of New York.

24 The Master: Well, I don't think you have accurately described the paper. The paper apparently granted a franchise to Messrs. Poppenhauser, Fink & Schleiser to lay pipes for the College Point Gas Company.

Mr. Neumann: I make the same objection, and that it is not a proper method of proof.

Mr. Tobin: The introduction of all these papers, I think, has been unfair to us, to ask us to sit here and have them passed in without giving us an opportunity to specifically object. I think we should be given some opportunity to object specifically, and to object to any specific paper.

The Master: I will give you that opportunity.

Mr. Ransom: These are documents, of course, which have been on file for a good many years in the files of the Public Service Commission.

Mr. Tobin: Yes, but we don't know what bearing they have on this case.

The Master: After you look at them, if you have any more specific objection, I will let you state the ground of your objection. This paper will be received.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 26.

Mr. Ransom: I next offer in evidence certified copy of the franchise granted under the foregoing resolution, Exhibit 26 in evidence, certified to by the Deputy and Acting Comptroller of the City of New York.

Mr. Tobin: I object to that on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

25 Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 27.

Mr. Ransom: I offer in evidence certified copy of a franchise granted by the Board of Highway Commissioners of the Town of Jamaica to the Long Island Illuminating Company, dated January 16, 1896, certified by the Assistant Deputy Comptroller of the City of New York.

Mr. Neumann: I make the same objection.

Mr. Tobin: Objected to on the same grounds.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit 28.

Mr. Ransom: I next offer in evidence franchise granted by the Town Board of the Town of Jamaica to the Long Island Illuminating Company, for the Town of Jamaica, dated January 10, 1896, certified by the Assistant Deputy Comptroller of the City of New York.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 29.

Mr. Ransom: I next offer in evidence certified copy of a lease from the Long Island Illuminating Company to the Newtown & Flushing Gas Company, covering its franchises, the date of such lease being April 10, 1901.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I object to it. This certification is a certification by a notary public that he has compared this document

26 I took it that when Judge Ransom said he offered a certified copy, he meant a certification by proper authority, and not by a notary public.

Mr. Ransom: Perhaps I had better have this marked for identification.

Paper marked Complainant's Exhibit 30 for identification.

Mr. Ransom: I offer in evidence original consent of the stockholders of record of the Long Island Illuminating Company to the lease which is the preceding exhibit for identification, to the Newtown & Flushing Gas Company.

The Master: Are you testifying to the genuineness of the signature?

Mr. Ransom: I think I have to ask that that be marked for identification.

The Master: We will have that as part of Exhibit 30 for Identification.

Mr. Tobin: We ask that we may have an opportunity to object to the exhibits as to form, and also as to contents.

Mr. Ransom: I offer in evidence certified copy of a deed dated October 24, 1859, from Charles Miller to the Flushing Gas Light Company, recorded in the office of the Queens County Clerk, October 28, 1859, in Liber 173 of Deeds, page 139.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial, and no evidence of title.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 31.

Mr. Ransom: I offer in evidence certified copy of a deed from Thomas Leggett and others to the Flushing Gas Light Company, dated October 7, 1862, recorded in the office of the Clerk of 27 Queens County, October 30, 1862, Liber 200, page 79.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 32.

Mr. Ransom: I offer in evidence certified copy of a deed from Albert Haydock and another, executor of the Will of Thomas Leggett, and Patience H. Leggett, widow, to the Flushing Gas Light Company, dated February 20, 1867, recorded in the office of the Clerk of the County of Queens on February 28, 1867, in Liber 251 of Deeds, page 24.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 33.

Mr. Ransom: I offer in evidence certified copy of a deed from Benjamin W. Downing to the Flushing Gas Light Company, dated December 16, 1869, recorded in the office of the Clerk the County of Queens, on April 13, 1870, in Liber 320 of Deeds, page 201.

Mr. Tobin: I make the same objection.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 34.

28 Mr. Ransom: I offer in evidence certified copy of a deed of John Griffin to the Flushing Gas Light Company, dated May 23, 1874, recorded in the office of the Clerk of the County of Queens on May 26, 1874, in Liber 439 of Deeds, page 195.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 35.

Mr. Ransom: I offer in evidence certified copy of a deed from Patrick Clark to the Flushing Gas Light Company, dated May 26, 1895, recorded in the office of the Clerk of the County of Queens on March 29, 1895, in Liber 1061 of Deeds, page 171.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 36.

Mr. Ransom: I offer in evidence original deed from Henry R. Wilson and his wife to the Newtown & Flushing Gas Light Company, dated June blank, 1901, recorded in the office of the Clerk of the County of Queens, July 23, 1901, in Liber 1259, page 289.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 37.

29 Mr. Ransom: I offer in evidence original deed from Mary E. Rogers to the New York & Queens Gas Company, dated May 20, 1909, recorded in the office of the Clerk of the County of Queens on June 29, 1909, in Liber 1632, page 208.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 38.

Mr. Ransom: I offer in evidence original deed from Elizabeth J. Kirby and her husband, to the New York & Queens Gas Company, dated March 20, 1911, recorded in the office of the Clerk of the County of Queens, on March 23, 1911, in Liber 1739, page 453.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 49.

Mr. Ransom: I offer in evidence original deed from John F. Rogers and others to the New York & Queens Gas Company, dated February 4, 1911, recorded in the office of the Clerk of the County of Queens on March 25, 1911, in Liber 1739, at page 451.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 40.

30 Mr. Ransom: I offer in evidence original deed from Celia F. Rogers to the New York & Queens Gas Company, dated March 20, 1911, recorded in the office of the Clerk of the County of Queens March 25, 1911, in Liber 1739, page 450.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 41.

Mr. Ransom: I offer in evidence original deed from Mary Powers to the New York & Queens Gas Company, dated July 16, 1912, recorded in the office of the Clerk of the County of Queens, July 24, 1912, in Liber 1823, page 378.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 42.

Mr. Ransom: I offer in evidence original deed from the Flushingside Realty & Construction Company to the New York & Queens Gas Company, dated September 16, 1912, recorded in the office of the Clerk of the County of Queens, in Liber 1834 at page 435, on September 28, 1912.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 43.

31 Mr. Ransom: I offer in evidence original deed from William P. McMahon and others to the New York & Queens Gas Company, dated June 8, 1915, recorded in the office of the Clerk of the County of Queens, June 11, 1915, in Liber 2008, page 340.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 44.

Mr. Ransom: I offer in evidence original deed from William Raynor to the New York & Queens Gas Company, dated July 22, 1915, recorded in the office of the Clerk of the County of Queens, on December 16, 1915, in Liber 2043, page 387.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 45.

Mr. Ransom: I offer in evidence certified copy of a deed from George Pople, to the New York & Queens Gas & Electric Company, dated October 30, 1899, recorded in the office of the Clerk of the County of Queens, in Liber 1225, page 315, on November 14, 1899.

Mr. Tobin: I object to it on the same grounds.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit 46.

32 HERBERT W. ALRICH, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Alrich, where do you reside?

A. 412 West 148th Street, Manhattan.

Q. What is your business?

A. I am a civil engineer employed by the Consolidated Gas Company of New York.

Q. How long have you been connected with the Consolidated Gas Company?

A. About nineteen years.

Q. Will you briefly describe your duties in the course of your employment by the Consolidated Gas Company?

A. Since my employment by the company I have been employed as a draftsman on making detail and general drawings for the construction of gas plants, gas apparatus, gas holders, the foundations for buildings and gas holders; I have worked on the estimating of cost of such structures; on the inspection and supervision of such construction work in the field; I have been employed on comparing contractors' estimates, and on the analysis of construction cost after the completion of the work.

Q. During what period of time have you had supervisory duties with respect to the construction of gas structures, apparatus and the like?

A. To some extent almost from the beginning of my employment by the company.

Q. That is dating back practically to 1901?

A. That is correct.

Q. Are you a member of any technical association?

33 A. I am. I am a member of the American Society of Mechanical Engineers; of the American Gas Association; of the Society of Gas Engineering of New York, and I have the gold medal of the American Gas Institute.

Q. Do your duties include civil engineering and construction engineer's services in connection with work done for and by affiliated companies of the Consolidated Gas Company, for example, the New York & Queens Gas Company?

A. My duties are in connection with the work of such companies, and of the complainant company in this case.

Q. Are you and have you been familiar with the property of the New York & Queens Gas Company?

A. I am and have been for some few years back.

Q. How many years?

A. Well, since, I think 1914 that I first examined the plant.

Q. From time to time you have had occasion to visit the plants and property of the complainant company?

A. I have. I have been there frequently.

Q. And in the course of your work have you had occasion to familiarize yourself with the land of the New York & Queens Gas Company, and the descriptions thereof contained in the deeds which have been placed in evidence?

A. I have.

Q. At my request have you prepared a chart or diagram of real property of the complainant company so as to show the property used by the complainant company in its gas business, and property owned by it as of January 1, 1920?

A. I have.

The Master: What do you mean by that question? Do you mean that this diagram shows property that they own, whether they used it or not?

34 Mr. Ransom: No, this is offered only as showing the property owned and used as of January 1, 1920.

Q. The New York & Queens Gas Company as I understand it, does not own the building which they use as an office?

A. It does not.

Q. And that is not shown on this diagram?

A. It is not.

Q. This relates to the land occupied by the plant and appurtenant structures of the company?

A. It does.

Q. (Showing paper to witness.) This is the diagram prepared by you?

A. It is.

Q. And the portion shown on this in pink tinting is the property to which you refer?

A. It is.

Q. And does the property tinted in pink on this map indicate the metes and bounds of property shown in the deeds? This is made up from the deeds?

A. It is, but it shows less than is covered by the deeds to some extent. It shows the land actually in use. The deeds to some extent convey more.

Q. That is, this is not offered as showing quite all the property which the New York & Queens Gas Company owns or claims to own at that point?

A. It does not.

Q. Or did own as of January 1, 1920?

A. No.

Q. Have you personally checked up the dimensions on this map with the tax maps of the City of New York?

A. I have.

Q. And this is known to you to be correct?

A. I know this map to be correct, yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial, and by the witness' own statement it is incomplete.

35 His own testimony was that the map does not conform to the deeds:

Mr. Ransom: No, he said there was other property which the Complainant Company owns which does not show on here in pink as used.

By the Master:

Q. Where did you get the dimensions from, Mr. Alrich?

Mr. Chambers: He said he got them from the tax maps, which are not in evidence. That would make it incompetent.

Mr. Ransom: He said he checked it from the tax maps.

A. I took the dimensions from the deeds and from a survey made for us by George W. Haviland, of Flushing.

Q. Survey of what?

A. A survey of the property of the New York & Queens Gas Company at this location.

Q. This particular piece of property that is shown in pink?

A. This particular piece, yes.

Q. You copied this survey?

A. I used his map in part as a basis.

Q. Where did you make your calculations from?

A. It does not involve calculations. The dimensions are from Haviland's survey and from the deeds.

By Mr. Cummings:

Q. You didn't go on the ground and make a survey yourself, did you?

A. I did not testify to it as a survey, I testified to it as a map.

By the Master:

Q. Did you take off the dimensions of the property yourself?

A. I did not.

36 Mr. Cummings: I object to it on the ground that he is not shown to be a land surveyor.

The Master: Well, that is not very important.

Mr. Cummings: To my mind it is.

The Master: He has not testified that he even measured it.

Mr. Chambers: He used data that is not in evidence, like the tax maps and the survey of Haviland.

Mr. Ransom: The deeds are in evidence.

Mr. Neumann: But he admits himself that the map does not follow the deeds.

Mr. Ransom: There is no obligation for us to show as of January 1, 1920, property owned by the company but not claimed as of that date to be used.

The Master: If Mr. Alrich had testified that he had measured this property, and had put his measurements down on paper, I would take it, I would not be much concerned about his ability to measure a piece of land; but he doesn't say he even did that. I won't take it at this time. Mr. Alrich can go over there and measure it and say that the measurements are right, and I will take it.

Mr. Ransom: This is a diagram made up from the deeds which are in evidence.

Mr. Neumann: But he admits that the diagram does not conform to the deeds.

The Master: The deeds show more than is shown here. You are

undertaking to put in evidence a map showing the space actually in occupation. Those figures he has taken from some other paper. I don't think I can take it. I don't think it is important one way or the other, but I don't think I can take it. Mr. Alrich can go over there with a tape and measure it. He doesn't have to give degrees and angles, but he can measure it from place to place. The objection is sustained.

By Mr. Ransom:

Q. Is there any dimension on this map which is not shown by the deeds that are in evidence?

The Master: Of course there are.

Mr. Tobin: I would make the inquiry as to whether this piece that is plotted here is property used for gas making purposes only. It says, "Property owned by the Company and used by the Company," and he stated that there was other property that was used in the making of gas that was not owned by the company.

The Master: I have ruled it out for the time being. Mr. Tobin.

A. The dimensions on the map are a composite of those given in the deeds. The deeds convey the property in separate parcels. The map combines them, and the map agrees with the deeds, except as far as I have excluded—

The Master: Does the company own property in addition to that?

The Witness: Yes, some additional property.

Q. Is there any dimension on this map that is not made up as a composite from the deeds, and is not entirely obtained by adding together dimensions contained in the deeds?

38 A. Or computed from dimensions in the deeds.

Q. You can take the deeds in evidence and get all that is shown on this diagram?

A. Yes.

The Master: When you make deductions.

The Witness: That is eliminating the property owned by the company that I have not shown on the map.

The Master: Then you have to make a deduction.

The Witness: Yes.

The Master: How many feet did you take—

The Witness: Why, you would deduct on Farrington Street the difference between the dimensions I give and that shown in the deeds on Farrington Street.

The Master: Where did you measure that difference, or where did you measure what you have here? You have to measure either one or the other to get this figure. You have to measure the building that is there, or you have to measure the land there, don't you?

The Witness: The conveyance from McMahon and others to the New York & Queens Company, representing the northerly part of Block 170, so states the description that the 298.32 feet that I give on Farrington Street is self-evident.

The Master: All right. What is your next course? On which end of this property have you omitted some land shown in the deeds?

The Witness: In Block 170.

The Master: At which end?

The Witness: The northerly side.

39 The Master: Now, you have omitted this property in here (indicating)?

The Witness: Yes.

The Master: Where did you get the dimension from the corner of Myrtle Avenue down to this point 298 feet away?

The Witness: By taking both Haviland's survey and the deeds.

Mr. Tobin: To expedite it, wouldn't it be helpful if we could have indicated on this map some reference to these deeds?

The Master: How can I order them to do that when you object to the map going in? The simple way is this: If one of you men will send somebody over with Mr. Alrich and check it up and concede it, that is the simple way, but my experience in the Consolidated case was that no concessions were ever made.

Mr. Ransom: This map was sent to the defendants several weeks ago. I ask to have this marked for identification at this time.

Map marked Complainant's Exhibit 47 for Identification.

Mr. Ransom: That is all with Mr. Alrich at this time.

The Master: If there is any cross examination of Mr. Alrich it is suspended for the time being.

Mr. Ransom: I have not finished my direct.

The Master: I am not going to have this piecemeal examination.

Mr. Ransom: I can't finish my direct because your Honor is putting me to a degree of proof that was not required in the Consolidated case.

The Master: Have you something else with Mr. Alrich?

40 Mr. Ransom: Yes, with regard to the structures on this land.

The Master: Go ahead with that. The only reason I am excluding it is on the question of absolute figures and distances.

Generally speaking, Mr. Alrich, the plant is located at about the point shown on this map, that is approximately correct?

The Witness: It is located exactly at this point, and in locating some of the structures upon the property I have had to employ these figures in time gone by as being correct. The gas holder would have been out in Farrington Street if these dimensions have not been correct.

The Master: I will let Mr. Alrich go on and describe the structures.

Q. Referring to this land in Block 171, Lot 40, and Block 170, Lot 31, what buildings and improvements, if any, are located on that land, and what use is made of the land and improvements?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the ground that the map on which he is going to base his answer is not in evidence.

The Master: I am not talking about a map. Mr. Alrich is asked

to describe the structures on a certain block and lot number on the tax map.

Mr. Chambers: The tax maps are not in evidence.

The Master: What lot are you talking about?

The Witness: Block 170, Lot 31 on the tax map.

Mr. Chambers: The tax map is not in.

41 The Master: I don't care whether it is or not.

Mr. Chambers: If you take judicial notice of it—

The Master: I am not taking judicial notice of it. Where is that property located?

The Witness: On Farrington Street.

The Master: Bounded on the south by Myrtle Avenue, on the north by Farrington Street—

The Witness: And on the east by Byrd's Alley.

The Master: Describe the structures on the land.

The Witness: I will begin with the first building, the office, laboratory and stock room, which is located on the north side of Myrtle Avenue midway between Farrington Street and Byrd's Alley. It is a brick building with a one-story frame annex.

The building contains the superintendent's office, the laboratory with the photometer and calorimeter; it contains the stock room upstairs, and the toilet and wash room.

In the one-story frame annex is a meter room and wash room for the workmen.

In the rear of this building is a one-story brick building containing two station meters, and one of the Wylie proportional type. It contains a scrubber; a washer; a No. 7 Root's exhauster having a capacity of 13 cubic feet displacement per revolution. This exhauster is of the cycloidal impeller type, and contains two hydraulic pumps.

42 North of this building is the generator house containing a 42 foot 6 inch Lowe type double super heater water gas generator and three condensers.

Adjacent to this is another generator house containing two 7 foot 6 inch Lowe type water gas generators.

Adjacent to this building and to the north of it is a building containing a Craig-Ridgway steam hydraulic elevator for raising the charging cars to the charging floor of the generator house. It also contains an engine and a blower for the generators.

To the east of this building is a boiler house containing two 150 horsepower Babcock & Wilcox boilers; one 125 horsepower Cummins boiler; one 150 horsepower Beggs boiler. These boilers are connected with a radial brick stack 100 feet high and 4 feet 6 inches in diameter.

Another adjacent building contains a second No. 7 Root's exhauster.

An enclosure within the generator house contains two No. 6 special Sturtevant blowers driven by Terry steam turbines.

By Mr. Ransom:

Q. What is their function?

A. To drive the blowers. The blowers are to drive the blast for the generators, the high pressure blasts.

To the east of the generator house and office are two steel rectangular purifier boxes.

Adjacent to the purifier boxes is a building built of corrugated iron which contains an engine and blower for revivification purposes, the revivification of the oxide.

North of the group of buildings I have described, and extending back to the northerly line of Block 170 is a frame coal shed 43 which in part is two stories and in the upper story is a machine shop and rooms for the repairing and cleaning of gas ranges.

On the north side of Myrtle Avenue just east of Byrd's Alley is a masonry tank 50 feet in diameter for the storage of the water which is circulated through the wash boxes of the water gas machines.

East of it is a circular masonry tar separator 35 feet in diameter. This is used for separating the tar and water as it flows from the wash boxes.

Just south of those two tanks and on the north side of Myrtle Avenue is a brick building containing the compressors used for sending the gas through the high pressure main to Douglaston. The building contains one Laidlaw-Dunn-Gordon compressor, and one smaller machine of the same type.

On the east side of Byrd's Alley is a gas holder in steel tank having a capacity of 250,000 cubic feet, which is the relief holder used in connection with this work, and to the south of it, and also on Byrd's Alley is a holder having a capacity of 100,000 cubic feet, which is the holder from which the gas is drawn and sent by the compressors to Douglaston.

The Master: What is the capacity of this plant?

The Witness: About 2,000,000 feet per day.

The Master: Maximum?

The Witness: About 2,000,000 feet per day maximum.

The Master: What are the sales per annum?

44 The Witness: That is a commercial matter I am not familiar with.

On Farrington Street at the northeasterly corner of Block 170 is a three lift gas holder having a capacity of 1,000,000 cubic feet. The tank is 123 feet in diameter.

Just south of the gas holder is a one-story brick governor house which contains the governors which control the pressure of the gas sent out into Flushing and this company's territory. It contains one 16 inch Connally automatic governor in tandem with a balance governor, and also one 12 inch governor of the same type, being two governors in tandem. This building also contains such headers and valves as provide complete control of the distribution of the gas on to the company's district.

South of the governor house there is a group of three buildings which are contiguous. The one in the rear is sheeted inside and out with sheet metal, and is a repair shop for automobiles, the company's automobiles. The front part on Farrington Street is the garage for the automobiles, and the northerly extension is used in part as a stable for such horses as the company may have, and also in connection with the garage.

The Master: Why should we not have a survey or map locating all these buildings, to save time, because counsel for defendants, if they cross examine Mr. Alrich in the way they did in the Consolidated case, will say, "Where on this map is this house," and "Mark this." Why not have a sketch that goes further and shows it all?

The Witness: I have a map with me which is not up to date.

45 The Master: Let us get one that is up to date that will show all these buildings as they are.

The Witness: Fronting on Farrington Street, and south of the garage, is a two-story frame house in which Martin Morrison, the superintendent of the works, lives. In the center of the block, east of the main buildings comprising the manufacturing plant, is a one-story brick building used for the storage of lubricating oils.

In block 171, the northerly plot of ground, there is located one tank for the storage of gas oil, 30 feet in diameter by 30 feet deep. It has a capacity of 150,000 gallons, and in the rear of it is another oil tank for the storage of gas oil, having a storage capacity of 30,000 gallons, 16 feet in diameter and 20 feet deep. On that same parcel there is also a frame building enclosing a deep well pump, there being a driven well which supplies the fresh water for the plant. There is also a small frame building for the storage of paints and painters' materials, and another frame building for the storage of ranges being carried in stock pending repair.

There are also upon the property two small brick valve houses, and a brick pump house containing five hydraulic pumps and an oil heater. The entire property shown by the exhibit for identification is inclosed by a galvanized iron "Cyclone Wire" steel fence. The property within this fence, adjacent to the corner of Myrtle Avenue and Farrington Street, is used for the revivification 46 of oxide when it is removed from the boxes and must be spread out on the ground.

Q. Did you cover the coal piles?

A. The coal sheds I referred to were, briefly, those being in the rear of the manufacturing plant. There are, all told, four inclosures for the storage of coal. They will accommodate about 1,800 or 2,000 tons, collectively.

Q. Are all of the holders of this company located at its station?

A. They are.

Q. And how many in number?

A. There are two storage holders and one relief holder.

Q. And the capacity of the storage holders is what?

A. 1,100,000 cubic feet, and of the relief holder 250,000 cubic feet.

Q. In the first generator house did you mention the turbine blowers?

The Master: I think he did, a steam turbine.

A. I described the turbine-driven blowers. In addition to the apparatus and buildings I described are the works connections, principally underground, connecting the apparatus throughout the plant. These connections comprise gas mains, water lines, tar lines, oil lines, steam lines, some of which are overhead and some of which are underground.

Q. Have you produced here any photographs showing this plant?

A. I have.

Q. Were they taken by you or taken under your direction and in the course of your duties?

A. They were, I produce seventeen photographs (handing counsel).

Q. Numbered one to seventeen?

A. Correct.

47 By the Master:

Q. What do they purport to show?

A. They show the Flushing Works of the New York & Queens Gas Company, which I have just described.

Q. All of these buildings, you mean?

A. They show all of these buildings, and the apparatus out in the yard but not concealed by the buildings.

Mr. Tobin: If the Master please, can we ascertain as to when these photographs were taken and how they were certified to?

The Master: Yes.

By Mr. Ransom:

Q. When were these taken?

A. February 21, 1919.

Q. And you were present?

A. I was.

Q. And looked through the camera?

A. I did.

Q. And you directed their taking?

A. I did.

By the Master:

Q. Have there been any changes since that time?

A. In the construction of the fence which incloses the property, which these photographs do not show, the said fence having been built in the latter part of—

Q. I mean do those photographs actually show the property as it is today?

A. They do, with the exception of the fence.

Q. Well, you say the fence is not shown on it?

A. The fence is not shown.

Q. Then the photographs do not show the fence?

A. With that exception, it shows the plant as it is today.

Q. There is no exception about it. It does not show a fence, does it?

A. It shows a wooden fence.

48 Q. This does (indicating)?

A. It shows a wooden fence which has since been removed, and in part a wire fence.

The Master: I understood you to say these photographs did not show a fence at all.

Q. With the exception of this wire fence, these photographs, to your knowledge, correctly show the plant as it is today?

A. They do.

Q. I notice that on photograph No. 11, showing excavations for alterations for yard connection, the condition there shown, so far as the excavations of the yard are concerned, was a temporary condition?

A. It was.

Q. And likewise, the matter shown on No. 12, the same excavation?

A. That is correct.

Mr. Ransom: I offer these photographs in evidence. I have only two sets here (handing set to Mr. Chambers).

Mr. Tobin: What date did you say these were taken?

The Master: February 21, 1919. What difference does it make when they were taken?

Mr. Ransom: What is that?

The Master: What difference does it make when they were taken if they are correct now?

Mr. Neumann: Might I ask counsel whether he intended to have the pencil marks that are on the back considered as part of the photograph that you can read when you put the photograph to the light?

The Master: Counsel for the complainant need not answer that question.

Mr. Ransom: There is not anything written on the back. These are photographs taken in connection with some other work.

49 Mr. Neumann: Just look at them—each one of them.

The Master: Do not let us waste time on that.

Mr. Ransom: These photographs were not made for this case, I will admit that.

Mr. Tobin: We object to them, if the Master please.

The Master: Why?

Mr. Tobin: We do not believe they have been properly proven.

The Master: Objection overruled.

Mr. Ransom: I will give the defendants one set of these now and

have another set made, and if you will tell me who takes these now we will supply the other set.

Mr. Chambers: I will take them (taking photographs).

Mr. Neumann: That objection inures to the benefit of the defendant Nixon also?

The Master: All objections and rulings will go to the benefit of all defendants.

Mr. Ransom: These will be marked as one exhibit? They are numbered one to seventeen.

The Master: Yes.

Photographs received and marked Complainant's Exhibit No. 48 (17 photographs).

Mr. Ransom: That is all with Mr. Alrich, with the exception of proof as to Exhibit 47 for identification.

The Master: The cross-examination will be reserved.

50 MAYNARD H. SPEAR was called as a witness on behalf of the Complainant and, having been first duly sworn, testified as follows:

Mr. Ransom: I offer in evidence a copy of the Uniform System of Accounts for Gas Corporations, as prescribed by the Public Service Commission for the First District of the State of New York, including the final order and the modifying order recently made in case No. 578.

The Master: Any objection?

(No response.)

Received and marked Complainant's Exhibit No. 49.

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, have you produced here a copy of the rate schedule of the New York & Queens Gas Company as filed with the Public Service Commission for the First District pursuant to its order?

A. Yes.

The Master: Isn't this a statutory rate?

Mr. Ransom: Yes, but they require, the Commission requires the filing of a schedule with respect to certain matters, as to forms of contracts and the like.

Mr. Neumann: May I see that (taking paper)?

Mr. Ransom: That was offered and received in the old case.

Mr. Chambers: Does this vary the statute? Is this in variance with the statute?

Mr. Ransom: No.

51 Mr. Chambers: The statute says a dollar. I do not see that we are interested in any other rate. I am going to object to it as incompetent, irrelevant and immaterial, on the

ground that the statute fixes the rate, and anything outside of that would be immaterial.

The Master: That is what made me ask Mr. Ransom when he offered it.

Mr. Chambers: I mean I do not see why we should go into the trial of something else than the Dollar Rate, unless they furnished gas outside Greater New York.

Mr. Ransom: As far as the rate is concerned, it only fixes it a dollar.

The Master: What is the purpose of this?

Mr. Ransom: It is part of the conditions under which we do business—a condition imposed by State regulatory authority.

Mr. Neumann: For what purpose are you offering it, Judge; what, particularly?

Mr. Ransom: For all purposes.

Mr. Neumann: No, what particular fact are you trying to prove by that writing?

Mr. Chambers: I insist that my objection is good there.

Mr. Ransom: Your Honor previously ruled that it was admissible, and the question was argued out at great length in the Consolidated Case.

Mr. Chambers: He is now offering in evidence a Statute, Chapter 125 of the Laws of 1906, which is the law on the subject of rates in this territory, and none other is recognized by the defendant Newton.

Mr. Ransom: Any regulation that you impose by authoritative law on this company becomes a part of the conditions under which it does business.

52 Mr. Chambers: No, I disagree with you. That statute covers the subject of rates, and it is supreme.

Mr. Ransom: I wish that statute were the only condition with which this company had to deal.

The Master: I will take it. Objection overruled.

Mr. Tobin: Exception.

Mr. Chambers: Exception.

Mr. Neumann: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 50.

Q. Mr. Spear, where do you live?

A. 252 Barclay Street, Flushing.

Q. How old are you?

A. Forty-six.

Q. What position do you now hold with the New York & Queens Gas Company?

A. Vice-President and General Manager.

Q. Since what date have you been vice-president?

A. January, 1920.

Q. When did you become general manager?

A. In 1907.

Q. Were you, during any period of time, secretary of the New York & Queens Gas Company?

A. I was.

Q. During what years?

A. Part of 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918 and 1919.

Q. What was your educational training and experience prior to entering business?

A. I took a special course in chemistry at Stevens Institute.

Q. Which you finished about when?

A. About 1894.

Q. When you went into business, with what were you first connected?

A. The Bayonne Chemical Works, as chemist.

53 Q. How long were you with that concern?

A. Two years.

Q. And after that what was, consecutively, your business experience?

A. I went with the Standard Gas Light Company in 1896 to 1899, as assistant superintendent of works; from 1899 to 1901, superintendent of the Hornell Gas Light Company, Hornell, New York. From 1901 to 1902 I was engineer with the Joseph Edwards Company, New York City, 1902 to 1905 as superintendent of the Newtown and Flushing Gas Company and New York & Queens Gas Company. 1905 to 1906 manager of the Williamsport Gas Company, Williamsport, Pa.; and 1906 to date, successively, manager, secretary, general manager and vice-president and general manager of the New York & Queens Gas Company.

Q. Have you actually made gas and been in actual charge of the operation of plants?

A. I have.

Q. Have the plants that you have had charge of been exclusively water gas plants?

A. All with the exception of the Hornell Gas Light Company, which was natural gas.

Q. And in the course of your duties as secretary, vice-president and general manager of the company, have you become familiar with the Uniform System of Accounts for Gas Corporations, as prescribed by the Public Service Commission for the First District?

A. I have.

Q. State in a general way what has been your personal experience with the accounting end of the gas business.

Mr. Neumann: Objected to, on the ground it is immaterial, irrelevant and incompetent.

The Master: Objection overruled.

54 Mr. Tobin: What difference does that make?

The Master: Objection overruled.

Mr. Tobin: Exception.

The Master: State your experience with the accounting department.

A. In the Williamsport Gas Company all the books were under my charge, with the exception of the general books, which were kept in New York, and since 1913 all the general books and the subsidiary books have been under my charge, with the New York & Queens Gas Company.

By the Master:

Q. You have not made entries in them yourself?

A. Not in general books, no.

Q. In any books?

A. Well, some of the subsidiary books, yes. For instance, I approved all vouchers, all sundry creditors' vouchers, and classified them.

Q. But the actual bookkeeping work is not done by you or under your immediate direction; you have a chief bookkeeper or accountant or somebody?

A. Yes, but I am in conference with him all the time. He comes into my office and asks me questions with regard to the books, and I look over them.

By Mr. Ransom:

Q. Do you classify the vouchers for materials and supplies and the like?

A. Yes, I do.

Q. And do you make up the various reports of the company?

A. Well, they are made up under my direction.

Q. That is, you have direct and personal charge of the doing of that?

A. Yes.

Q. Are you familiar with the books of the New York & Queens Gas Company, and the method of making entries therein?

A. I am.

55 Q. Will you describe what books of account and subsidiary records were kept by the New York & Queens Gas Company during the years 1919 and 1920?

The Master: Do you believe that this will be a case where I am forced to take in general books of account, the same as I did in the Consolidated Case?

Mr. Ransom: I so think.

The Master: I should not imagine it would be very difficult to put in somewhat better proof here.

Mr. Ransom: I think we will be able to produce somewhat more detailed proof in certain respects.

The Master: You can have the man who made the entries in books, I imagine, and bring in the original papers, with a small company like this.

Mr. Ransom: We can do something like that.

Mr. Tobin: Mr. Master, I think Mr. Neumann's objection is

good—that is, his last objection. There is nothing shown yet that Mr. Spear is in real touch with the books of the company.

The Master: His objection was not good, Mr. Tobin, because the inquiry was simply, what did he have to do with them. Now he has told us what he had to do with them. There may be another objection come along based on that; but that objection was not useful.

Mr. Neumann: It was a very clumsy question, and I did not get the purport of it, myself.

56 The Master: What was the last question?

Q. (Repeated by the stenographer.)

A. General ledger No. 4—

Q. Which covers what?

A. January, 1919, to date.

Mr. Neumann: You are now reading from a memorandum, are you, Mr. Spear?

The Witness: Yes.

(Continuing:) General Journal No. 5, from September, 1918, to date; General Cash Book No. 3, July, 1916, to date; Accounts Payable Ledger, No. 4, January, 1919, to date; Operating Expense Ledger No. 2, January, 1919, to date.

Subsidiary to that, are the Accounts Receivable Ledger, Sundry Debtor Blotters, then Consumers' Ledgers A to I, inclusive, and K, and four Prepayment Ledgers, Bill Register, Pay Rolls, Vouchers and reports of various departments.

Q. Describe, if you will, the system by which entries relating to the costs of material used in the manufacture of gas find their way into what you have referred to as the Operating Expense Ledger?

A. Coal is received—take one, for example, which is Coal. The receipt of the coal is certified to on the invoice rendered by the coal company, on the back, certified as to the quality of the coal and the quantity received, and he puts it on his running daily report. The bill is sent to the accounting department, where it is entered, where the accounting department check up the additions and extensions, and the price. Then it comes to me for approval, and the classification; then goes back to the accounting department, who put it in the accounts payable and through our general books.

57 Q. How is coal received at this plant of the New York & Queens Gas Company? Is it received directly from a railroad connection up to this time, or is it brought by trucks or wagons?

A. It is brought by barge and unloaded at the dock, on Flushing Creek, and then carted from there in automobile trucks to the plant and stacked in the yard, in the coal bins.

Q. How far is the point of unloading of the barges?

A. About half a mile. At the present time they have got to cart it over that, on account of the construction of a big sewer which blocks the way. They have got to go a round-a-bout way to get to it.

By the Master:

Q. About how many barges of coal do you have in a year?

A. Of broken coal, about an average, pretty nearly, of a cargo a month, five or six hundred tons; and on boiler coal probably one every two months.

Q. When it comes on the barge alongside of Flushing Creek is it weighed there at all or is it weighed when it gets to the plant?

A. No, it is not weighed; we take the bill of lading weight.

Q. You always take the bill of lading weight.

A. We have to pay on the bill of lading weight.

Q. Do you not in any way check up your quantities?

A. Well, we check up the quantities by periodical inventory, periodical measuring of the coal pile.

Q. You do not check up the quantity in the barge for which you are charged?

A. No.

Q. Who receives the coal from the barge?

A. The superintendent of the works.

Q. Personally?

A. Yes.

58 Q. So he can tell us just how many barges of coal he got during the year—he would know?

A. Oh, yes.

By Mr. Ransom:

Q. Is Flushing Bay and Flushing Creek within the lighterage limits of New York City?

A. No.

Q. Do you know about how far or how long a trip by water it is from the lighterage limits of New York harbor?

A. I would say about five hours; four to five hours.

Q. About how many miles, do you know? Or do you know it only in terms of hours?

A. No, I would not say how many miles it is.

Q. At what point is oil received and how is oil received for the plant of the New York & Queens Gas Company?

A. It is received at the dock on Flushing Creek, and from there we have a pipe line that runs to the plant. The barge is run in by the tug and the tug stays with it, furnishing steam to the pump, and the pump is on the barge, and pumps all the oil from this barge up into our tanks.

By the Master:

Q. Is that measured?

A. Oh, yes.

Q. Where is that measured?

A. In the works.

Q. In the works?

A. Yes, the measurement is taken before we start to pump. The

barge comes in and they telephone up that the barge is in and ready to start, and the measurement is taken of the tanks and the reading of the oil meters on the machines.

Q. In the works?

A. In the works. And then when they finish they usually pump for a half or three-quarters of an hour to clear the line, and then after they stop the measurement is taken again of the tanks, and the reading of the oil meters.

59 Q. And the additional quantity would represent the amount you got out of the barge?

A. Yes.

Q. Do you pay on that measurement a certified amount or on bill of lading, or something of that kind?

A. We usually agree pretty nearly with the Standard Oil Company.

By Mr. Ransom:

Q. You have a Produce Exchange certification?

A. Yes, from Charles Martin & Company.

The Master: But you do not vary much from it?

The Witness: Very little.

Q. That is the commonly-recognized method of certification for oil delivery in this territory?

Mr. Neumann: Objected to, as incompetent, irrelevant and immaterial.

Mr. Chambers: That is objected to.

The Master: I will sustain that.

Mr. Ransom: Exception.

By the Master:

Q. Tell me this: who attends to the receiving of the oil?

A. The superintendent.

Q. Does he supervise the measurements?

A. Sometimes he does it personally; sometimes he sends an engineer down to take the measurements.

Q. Is there any record to show whether he does it himself or whether the engineer does it?

A. I do not think there would be any record to show just who took the measurements of each barge.

Q. The superintendent would have some record of its having been done, though?

A. I don't think he keeps the actual record of the measurements after the bill has been passed and the entries made.

60 Q. How many deliveries of oil do you get a year?

A. About one a month.

Q. That would be about 12?

A. Yes.

Q. Those are the two big items, are they not, of material?

A. Yes, coal and oil. Of course, we have two kinds of coal; we have the generator coal and the boiler coal.

The Master. Yes. I have been asking these questions, Judge, to indicate how you might give us better proof on this than you did in the Consolidated Case.

Mr. Ransom: Perhaps not better proof, but more proof.

The Master: Well, perhaps a little better, too.

By Mr. Ransom:

Q. Will you describe the method by which the record is kept of the amount of coal used in the generators and under the boilers.

A. The gas maker's assistants fill the large buggies of coal from the coal pile, take it by elevator to the charging floor of the generator house, and when the gas maker uses it he marks down the buggy that is used.

Q. And you have a standard sized buggy?

A. Yes. And then that record goes on the gas maker's report, which is turned in to the superintendent the following morning, and he makes up his report from those figures. In the case of boiler coal it is wheeled in in small barrels by the coal passers, dumped on the floor of the boiler room, where the fireman can use it; then that record is taken from the slate the following morning by the superintendent, for each day.

Q. What is your system of keeping track of the labor elements entering into your various departments?

61 A. The superintendent has a distribution sheet for each employee, each man at the plant, and—

Q. He has a time card, which permits of a showing of the distribution of his time?

A. Yes.

Mr. Neumann. Why not let the witness say it, Mr. Ransom? He was going along in good shape.

The Witness: Yes, he has a distribution sheet, with the man's name on it, and then it has the various accounts on the upper part, and the dates down the side. It runs for a month. He puts the man's name down opposite each account that he worked the previous day, and then once a week he totals it and makes up his pay roll from that, and the pay roll goes through the accounting department. At the end of the month this distribution sheet is checked and the distribution put on the back of the pay roll.

Q. That is true so far as the manufacturing department is concerned. What is done in the other departments—the Street Department?

A. The street department is all contract work. In the shop department they have time cards which each man makes out, and that is transferred to these distribution sheets. It is a very simple sheet. In fact, the sheet was gotten up originally for the Shop Department and applied to the works. It is carried for each one of the men, and from that it is entered in the pay roll.

Q. The pay roll for the Manufacturing Department is certified by whom?

A. By the superintendent of the works.

Q. And the pay roll for the Shop Department is certified by whom?

A. By the clerk in the shop and the superintendent of the shop.

62 Q. And the office staff and employees, how is their employment record kept?

A. On still another pay roll of the same kind.

Q. That is kept directly on the pay roll?

A. Yes.

Q. At the general office?

A. Yes.

Q. Where is the office of the New York & Queens Gas Company?

A. 88 Main Street, Flushing.

Q. Not at the works?

A. No.

Q. Will you describe the accounting method by which entries relating to repairs of meters and other miscellaneous shop items find their way into the general books of account?

A. The repairs to meters are made by the Standard Gas Light Company at the 111th Street shop, and are billed once a month as to the number of meters repaired and the kind of repairs, and that is checked from the records at the shop and the bill certified to by the clerk and the superintendent, and put through, the same as the other sundry creditors' bills.

Q. In what manner are the accounts of consumers kept, and what is done as to meter readings and the making out and collection of bills and accounting of the receipts and revenues of the company? Just describe the method pursued in reference to those.

A. The indexer is given a book for the day's work, and visits each one of the—that book is loose-leaf and has a sheet for each consumer, and is ruled off by spaces, so that the date can be put on it. Then he reads the index of the meter, putting the reading in the space provided for it, brings the book in in the afternoon, and the next

63 morning the bookkeeper places that reading or transfers the reading from the index book to his ledger, in which is also shown the previous month's index. He makes the subtraction in another column, showing the cubic feet of gas consumed, multiplies it by a dollar, and gets the amount for the bill.

Mr. Chambers: I think we ought to object to that. I think he is going too far, and you ought to get that information from the person himself. I object to it as incompetent, irrelevant, immaterial and hearsay.

The Master: I think the witness is just describing a system.

Mr. Chambers: If it is limited to that, I think that might be all right.

The Master: I think that is the purpose of it now.

Mr. Ransom: He is describing a method and course of business.

Q. Had you finished?

A. Then the bookkeeper puts the reading on the bill, figures the amount, checks it with his ledger, and the bill has already been addressed by someone else in the department there from the Elliott

addressing machine, and then it goes to another bookkeeper, who puts it in the bill register, where the total is made, and we get the total sales for the month that way. Then, when the bill is paid, any bills are paid, the coupon is taken from the bill and pinned to an adding machine record, totalling all the coupons for that day on a particular ledger; it goes to the bookkeeping department and is checked in both the register and ledger. At the end of the month both the register and the ledger are balanced and act as a check on one another. At the end of the month, any unpaid bills are entered in the outstanding book, and from that time on until those accounts are changed to bad and doubtful, the payments are entered in both the outstanding book and the ledger as a check, and both balanced.

Q. Your sales territory is divided into how many districts?

A. Flushing, College Point, Whitestone, Bayside and Douglaston.

The Master: Five?

The Witness: Yes, sir.

Q. Does the New York & Queens Gas Company keep more than one set of books of account?

A. No.

Q. And did not, during 1919, or thus far in 1920?

A. No.

By the Master:

Q. What do you have, different branch offices in these five sections?

A. No.

Q. Just one main office?

A. We have one office in Douglaston, for the purpose of developing the territory. You see, we have only started to furnish gas there since last November. In College Point and Bayside the people can pay the bills at the bank, and the bank sends a statement of what they collect, and it is deposited right away. Otherwise we have no branch offices.

By Mr. Ransom:

Q. Where is your shop department?

A. Right around the corner from the office, on Amity Street.

Q. That is located in rented property?

A. Yes, sir.

Q. And your office is, likewise, located in rented property?

A. Yes.

Q. Up in the business section of Flushing?

A. Yes.

65 Q. The only land you own is the land in connection with the works, in Farrington Street and Myrtle Avenue?

A. Yes, that is right.

Q. Have you produced in court the books of account of the complainant company, concerning which you have testified?

A. I have.

Q. Is this book which you have here produced, marked General Ledger No. 4, the general ledger of the New York & Queens Gas Company, to which you have referred, covering the period concerning which you have testified (indicating book)?

A. It is.

(Examination of the witness suspended.)

PATRICK J. O'CONNOR, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. O'Connor, where do you live?

A. 48 Central Avenue, Flushing.

Q. What is your business?

A. Builder.

Q. What kind of building?

A. General building.

Q. How long have you been in that business?

A. 15 years.

Q. And have been, during that time, actually engaged in the construction of frame buildings and brick buildings and other types of buildings in that Flushing region?

A. Yes, sir.

Q. And you are and have been familiar with the prices of labor and material for buildings in Flushing and vicinity?

A. I have.

Q. Are you accustomed to estimating the cost of erecting buildings in that region?

A. I am.

Q. At the request of the New York & Queens Gas Company, did you examine two buildings of the New York & Queens Gas Company, one a frame building occupied by the superintendent as his residence, at the plant, and the other a brick office building with a frame addition?

A. I did.

Q. That was about when?

A. About the first of the year.

Q. Have you made an estimate of the cost of building such buildings as of December 31st, 1919, or January 1st, 1920; that is, as of the first of the year?

A. As of the first of the year, yes.

Q. And is this the estimate which you made and submitted to the New York & Queens Gas Company relative to the erection of those two buildings at that time (handing witness)?

Mr. Tobin: If the Master please, may we have some particular designation of the building, so we may know exactly?

A. Yes, that is.

The Master: A residence and an office building. Who lives in the residence, this man Morrison?

Mr. Ransom: The superintendent.

The Master: Where are these buildings located?

Mr. Ransom: At the plant.

The Master: Part of the plant?

Mr. Ransom: Well, right in the plant structure. One of them is, of course, the office building with a frame addition, and the other is on the plant property, facing on Farrington Street, right by the side of the—it is between the revivification yard and the governor house and garage.

Mr. Neumann: I move that that be stricken from the record.

Mr. Chambers: That is some of Mr. Ransom's testimony.

67 The Master: He asked the witness whether he gave that estimate.

Mr. Neumann: May my exception be noted to the refusal to strike from the record?

The Master: Yes.

Q. As to the superintendent's cottage—what kind of a building is that?

A. A frame building.

Q. Of what size?

A. 30 by, I think, 21 or 22, as I remember it. Now, I would not be sure of that.

Q. Would this refresh your recollection as to those dimensions (handing witness paper)?

By the Master.

Q. How high?

A. A two story and attic.

Q. What kind of a foundation?

A. A brick foundation.

Q. How deep?

A. Seven foot.

Q. How thick?

A. It might be an eight-inch wall.

Mr. Neumann: What is that? Might be eight-inch wall?

The Witness: Eight inch.

Mr. Neumann: What were the words before "eight inch"?

The Witness: I did not use any, sir.

By Mr. Ransom:

Q. What was your figure for the cost to build that building or such a building as of December 31st, 1919?

Mr. Chambers: Just a minute now. Are you speaking of the residence?

Mr. Ransom: Yes, the superintendent's residence.

Mr. Chambers: I object to that question on the ground it is incompetent, irrelevant and immaterial. It is obvious that
68 a residence ought not to be treated here as used and useful in making gas. Upon the further ground that his prices speak of an abnormal period, namely the present time, and we are concerned—if we are concerned at all with this building, which I say we are not—with book cost or cost to the company as of some period when we were not in an abnormal time.

The Master: Yes. I am going to take the testimony, Mr. Chambers, upon this theory: that I want to have it in the record as a basis for the statement, if it be the fact, that in this abnormal period it is very much more than it would be in normal times, and that the book value, if I find that to be the fact, or the book investment, is less than it would be today. I agree with you that the cost of reproducing, even less depreciation, in normal times, of property, is not the basis on which the rate must be made.

Mr. Ransom: The question is whether this is abnormal.

The Master: What?

Mr. Ransom: This price level has continued so long it is likely to go higher.

The Master: I do not agree with you at all. What I have been trying to say throughout the other case and this is that the investment must be taken as a normal period of investment, and if it analyzes in this case as it did in the Consolidated case, then what you actually and honestly put into it is the basis on which the rate should be made. The property ought not to be penalized because it
69 costs more to reproduce at this time. So far as making gas is concerned, there we have an entirely different situation. There I say what it costs you to make the gas, assuming we strike a high normal level, is what it costs you to make it.

Mr. Neumann: Then there is the other objection, that the residence is not a part of the costs.

The Master: I am going to reserve consideration of that until I hear a little more about it. It might be a very desirable thing to have the superintendent right on the plant and, if so, I would say this was an essential part of the plant. I will overrule the objection at this time.

Mr. Neumann: Exception.

Q. What was your figure?

The Master: For the reproduction of that house new, the beginning of the year; is that the idea?

The Witness: Yes.

A. \$5,600.

Mr. Chambers: New, did you say?

The Witness: New.

The Master: That is, if you were to put up a new building of that general type, with an eight-inch brick foundation wall, seven feet deep, two story and attic, with the same kind of material as a

new building, it would cost you, at the beginning of the year, how much?

The Witness: \$5,600.

Mr. Neumann: When you say the beginning of the year you mean January 1st, 1920?

The Witness: Yes, sir.

70 The Master: It would cost you more today?

The Witness: It would.

Mr. Chambers: The objection, if the Master please, goes to your question, too.

The Master: Yes.

Q. That is, as of the 31st of December, 1919, would you be willing to take a contract for work at that figure?

Mr. Chambers: I object to that.

Mr. Tobin: I object to that.

The Master: I will sustain the objection.

By the Master:

Q. Even at the first of the year, you were not crazy enough to take contracts at a fixed price, were you?

A. No, not at a fixed price, unless you could guarantee the material so you could have it.

Q. And guarantee that laborers would not go crazy, too?

A. Well, that is the point that enters into it.

The Master: That is what I mean.

By Mr. Ransom:

Q. Will you describe the other buildings—the building used as an office, with a frame extension?

A. As I have it here?

Q. As you recall it.

The Master: If the way you have it there is correct, you can say as you have it.

A. As I have it, the office building—

Mr. Chambers: No, I object, unless he saw it.

By the Master:

Q. Who wrote that down, Mr. O'Connor?

A. I dictated it and my daughter wrote it.

Q. Was it correctly written?

A. I take it so, sir.

71 Q. Looking at it now, would you say that correctly describes the building, as you recall it?

A. Yes, sir.

Mr. Chambers: Where did you get that information from?

The Witness: I was at the plant and measured the building.

The Master: And dictated it to his daughter. Now he says on looking at this estimate that he dictated to his daughter he recalls the building as he describes it there.

Q. Is that right, Mr. O'Connor?

A. That is right.

Q. Go on and tell us what it is.

A. As I have it on here; as I have written this estimate?

Q. I do not care where you get it.

A. I will read it from here. Office building, brick construction, about 25 by 30, two story and basement, with addition, frame construction, about 18 by 25, one story, would cost to replace at this time about \$10,400.

By Mr. Ransom:

Q. That was as of December 31st, 1919?

A. December 31st, 1919.

Q. It would cost more at the present time?

A. It would.

Mr. Tobin: May I ask, if the Master please—

The Master: Of course, that is a new building.

Mr. Chambers: The same objection to that as to the other one.

By the Master:

Q. Let me ask you while we are here, Mr. O'Connor, so we can cut this matter short: If you were estimating the cost of reproducing this last building on a fire loss claim, allowing for the age of the building that is there, what would you have figured it on a reproduction cost, its sound value, as of December 31st, allowing for the building that was there?

A. If the building had been totally destroyed?

Mr. Chambers: I object to the question as incompetent, irrelevant and immaterial.

Mr. Ransom: I object to the question. It is incompetent and has no bearing on the issues in this case.

The Master: I am going to overrule all objections.

A. Might I ask you, if the building was totally destroyed?

Q. Yes.

A. If I was to reproduce I would have to figure for a new building, but the fire adjusters would not allow it.

Q. What would you figure ought to be allowed for the age of the building?

Mr. Ransom: I object to it as incompetent.

Q. (Continuing:) So you would be able to reproduce the building, a building of that age?

A. That is going too deep for me.

Q. You cannot answer it?

A. That is going too deep for me.

Q. Then my question does not make much difference in this record. How old a building was it?

A. Why, offhand I would say 20 or 25 years.

Q. In what condition?

A. Fairly good condition. The building was in good repair.

Q. Did it need any pointing or painting?

A. It had been kept up and pointed and painted and was in good condition.

Q. How was the superintendent's house?

Mr. Chambers: I object to that.

73 A. I would say the same. It was in good repair.

Q. How old a building?

A. I do not suppose more than, possibly, 15 years. It might be 20, don't you know.

By Mr. Ransom:

Q. Mr. O'Connor, in this photograph No. 3, is that the house referred to, also appearing in No. 2—a side view of it?

A. Yes, this here (indicating).

Mr. Neumann: Specify the house.

The Master: Which house, the superintendent's house?

Mr. Ransom: There is only one house in the picture.

The Master: The superintendent's house, you are referring to?

Mr. Ransom: Yes.

Q. No. 15 also shows the house?

A. Yes; that shows the rear end of the house.

Q. On No. 2, does that show the office building and the frame addition?

A. It does.

The Master: Over to the left hand end of the picture?

The Witness: Yes.

Q. And in the left hand side of photograph No. 1 is shown a closer view of the frame addition?

A. Right.

Mr. Ransom: I have offered this in evidence (indicating paper).

The Master: I have refused to take it.

Mr. Ransom: I ask to have it marked for identification.

The Master: What are you asking be marked, the estimate of the office building?

74 Mr. Ransom: Yes, for the superintendent's cottage and office building and frame addition.

The Master: Mark it for identification.

Paper received and marked Complainant's Exhibit No. 51, for identification.

The Master: Are you through with Mr. O'Connor?

Mr. Ransom: Yes.

The Master: Any cross-examination?

Mr. Chambers: Yes. I would like about an hour with Mr. O'Con-

nor.

The Master: I am not going to decide in this case on a question of reproduction cost. I am telling you now, and putting it on the record, I won't do it.

Mr. Neumann: You allowed the complainant to prove that value for the present.

The Master: Yes, as indicating the futility of attempting to fix rates upon the present price of reproducing property. Since the first of the year the cost of putting up those properties has again advanced, hasn't it?

Mr. Chambers: Same objection.

The Witness: Yes.

The Master: How much?

The Witness: Why, 10 or 15 per cent, or more; easily 15.

The Master: How is anybody going to fix a rate valuing prop-
erty on a reproduction basis? It can not be done. You would
have to change the rate every two weeks.

Mr. Neumann: If the complainant is allowed to put in that tes-
timony we should be allowed to cross-examine the witness.

75 Mr. Chambers: I want to ask him some questions.

The Master: Then we will suspend cross-examination until
some future date. We will suspend with Mr. Spear today, and I
will hear anything that counsel have to say with reference to the
failure of the complainant to comply with any orders of the Court.

Mr. Tobin: We deem, if the Master please, that there has not
been a compliance with the paragraph marked five; that is, which
calls for the age of property, date of installation and acquisition.

The Master: Let us see what they give you.

Mr. Tobin: They do not give any age at all.

The Master: Let me see what they did give you.

Mr. Ransom: We have not yet furnished or undertaken yet to
furnish—the matter is being prepared, and Judge Mayer's order,
entered on the 14th, said within 15 days we should furnish the date
of acquisition or installation of property, and we should furnish
the age and, if the age was not known, that that should be so stated.

The Master: That will be the 29th of April.

Mr. Ransom: That material is now being prepared and will be
ready in a few days.

The Master: Is there anything else anybody wants to talk about?

Mr. Ransom: The complainant, as already stated, is offering
76 proof along the lines which it started to do with respect to
the value of this property for rate purposes. Judge Mayer
has said that, if we expect to offer proof of original cost as a
part of our case, we shall furnish it. We do not expect to offer
proof of original cost as part of our case any more than we did in
the Consolidated Case.

The Master: Yes, you did in the Consolidated Case.

Mr. Ransom: We did in rebuttal.

The Master: What?

Mr. Ransom: We did in rebuttal.

Mr. Neumann: Do you think we are going to take the burden of proof?

The Master: Wait a minute; let us understand this right now, Judge, and we will not be misled. If you rest your case here, without any evidence at all as to what you invested in these properties, I will dismiss the complaint.

Mr. Ransom: I do not think you could.

The Master: Then I will refuse to take any more proof.

Mr. Neumann: That is his position.

Mr. Ransom: If we show, as we shall, that the cost of making and distributing gas alone, without any return on any investment is substantially more than the statutory rate—

The Master: I guess that is a complete answer, of course, but if I find there is even four cents—

Mr. Chambers: They admit $2\frac{1}{2}$ per cent they make. Have you seen that complaint?

Mr. Ransom: Well, in 1918.

The Master: But in the Consolidated Gas case you had proof that you issued \$38,000,000 worth of capital for property. That you got right away, the first thing you got in your case. There was proof, and I said at the start I would hold that to be evidence of some cost to the Consolidated

Mr. Ransom: We have even better proof in this case without offering either proof of original cost or proof of reproduction costs, which we will offer.

Mr. Chambers: They say they are making $2\frac{1}{2}$ per cent.

Mr. Ransom: Why not be fair? We said in 1918.

Mr. Chambers: Well, that is the only time you speak of.

The Master: My only purpose here and in the Consolidated Case was to give you the way my mind is running.

Mr. Ransom: I am very glad to have it.

The Master: And you take your chances.

Mr. Ransom: I shall.

The Master: Anything else?

Mr. Tobin: That part has not been complied with. Then, if the Master please, as in paragraph 1, it may be from time to time we shall have to ask through you that certain other information be furnished, because it is such that we cannot make demand exactly at this time.

The Master: I will have to wait until complainant's time expires within which to give you all the information that is required here.

Mr. Ransom: We have furnished a complete inventory of this property and the appraisal. The Court has said if anything further is needed along those lines it will require a certificate of the

Master.

78 The Master: I will handle it when we get to it.

Mr. Tobin: We shall be guided by the order in that respect, not what you are trying to read into the record.

The Master: If I find the order has not been complied with I will certify it up. I will see that it is complied with.

Mr. Ransom: It says the Special Master shall so certify.

The Master: The answer is we will get it here and there will be no certification.

Mr. Neumann: I will call on Judge Ransom to produce my letter to him of April 21st.

The Master: You produce your copy to him; what is the difference?

Mr. Ransom: I can cover that very succinctly, as I covered it before Judge Mayer. We turned over to them such books relative to the Newtown and Flushing Company as we had. The situation is, of course, that the Consolidated Company acquired this property about 1913, and the New York & Queens Gas Company came into existence in 1904. Such information and documents as there are are in the form of books, and there is not anything that I know of or can find anything about that has not been turned over to Mr. Frank with respect to the Newtown and Flushing Company.

Mr. Neumann: In order that there may be no question about it and the Master may have the situation before him, the situation is this: The New York & Queens books, for instance, will be open

79 at a lump sum, for instance \$1,000,000, the value of the property, and the last entry on the predecessor company will be for \$600,000, and there is nothing anywhere to explain in these books that we have had thus far the difference between \$600,000 and the \$1,000,000.

The Master: Very likely there is not anything.

Mr. Neumann: There are merger papers and agreements in which that is set forth, and those are the papers we want.

Mr. Ransom: The merger papers are in evidence today.

Mr. Neumann: That will indicate how the increase is arrived at. As I told Judge Mayer, we want to get down to the very things in contention.

The Master: We will get it before the case is over.

Mr. Ransom: You will not find anything that is not.

The Master: We will either find where the \$400,000 went or we will assume where it went.

Mr. Tobin: That is left open, then, as I understand it?

The Master: Yes, we will have to handle that as we go along. Why is there any necessity for a long adjournment just yet? I do not see any necessity just yet for any long adjournment. So far as this proof that is being offered now is concerned, the books are methods of keeping books, the calling of witnesses making entries, or the superintendent, or whoever it is--so far as they want to go or think they have got to go all those things we can take in, can we not?

80 Mr. Ransom: We would like to go ahead.

The Master: What harm will it do? You do not have to be prepared much for that; you know the situation of that. There may be necessity for an adjournment of a greater length of

time when you get these inventories, but I think now we can run along and get rid of a lot of these things here.

Mr. Ransom: We can go ahead on Friday.

The Master: I think I will put it on for Friday, the 30th, at 2 o'clock.

Adjourned to Friday, April 30, 1920, at 2 P. M., at the office of the Attorney-General of the State of New York, 51 Chambers Street, New York City.

Last Complainant's Exhibit, 51.

81

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, April 30, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.
Mr. Tobin and Mr. Cummings, of Counsel for defendant, Newton.
Mr. Neumann and Mr. Deegan, of Counsel for defendant Lewis
Dixon, Public Service Commissioner.
(No appearance for defendant Dennis O'Leary.)

MAYNARD H. SPEAR recalled:

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, when we suspended at the last hearing you had just identified General Ledger No. 4 of the New York & Queens Gas Company as the General Ledger kept by the company during the period which you specified on last Monday. Did the company have any other general ledger during that period?

A. No, it did not.

Q. Did you know in whose handwriting this book is?

A. Some of it is in Mr. Raynor's handwriting, and some in the handwriting of William Foy.

82 Q. Who is Mr. Raynor?

A. Secretary of the company.

Q. Formerly Assistant Secretary?

A. Yes, sir.

Q. And before that head bookkeeper?

A. Yes, sir.

Q. Who is Mr. Foy?

A. He is the general bookkeeper now.

Q. Do you find the handwriting of any other person or persons in that book?

A. No.

By the Master:

Q. Was that book in charge of either one of those two men you have mentioned?

A. Yes, sir.

By Mr. Ransom:

Q. It was in the charge of Mr. Raynor, as you testified, under your direction?

A. Yes, sir.

Mr. Ransom: I ask that this book be marked for identification.

Book marked Complainant's Exhibit 52 for Identification.

Q. I show you a book called General Ledger No. 5 of the New York & Queens Gas Company. Is this one of the books of that company, and the only book of its kind which was kept during that period?

A. It is.

Q. Can you say in whose handwriting the entries which you there find are?

A. William Foy and Mrs. Townsend.

Q. Who is Mrs. Townsend?

A. One of our bookkeepers.

Q. Is there any particular assignment of duties as between Mr. Foy and Mrs. Townsend?

83 A. Mrs. Townsend is a bookkeeper in the commercial department. While I was in the auditing department she helped Mr. Raynor out with these books, making entries under his direction.

Q. What is Mr. Foy's assignment of duties?

A. General bookkeeper. He devotes his entire time to the general books.

The Master: Mrs. Townsend generally is in the commercial department?

The Witness: Yes, bookkeeper.

Q. When did Mr. Foy come into the employ of the New York & Queens Gas Company?

A. I think it was April, 1919, either April or the first part of May. There are also some entries made here by Miss Mold.

Q. Is she a bookkeeper with the company?

A. No, she is my stenographer.

Q. She is still in the employ of the company?

A. She is.

Q. How long has she been in the employ of the company?

A. I would say probably seven years.

Q. Since what time, about has Mr. Raynor been employed by the company either as bookkeeper or assistant secretary or secretary?

A. He started in 1913.

Mr. Ransom: I ask to have Journal No. 5 of the New York & Queens Gas Company marked for identification.

Book marked Complainant's Exhibit 53 for Identification.

Q. You referred the other day, Mr. Spear, to a ledger called Operating Expense Ledger. Is this book the Operating Expense Ledger No. 2 of the New York & Queens Gas Company, the book to 84 which you referred, and does it cover the period which you described?

A. It does.

Q. What about the handwriting in that book?

A. Mr. Foy's handwriting is here, and Mr. Raynor's. There is one other handwriting, I think it is Miss Mold's. I am not quite sure, because there isn't much written out, it is mostly figures.

Mr. Ransom: I ask to have this marked for identification, Operating Expense Ledger No. 2.

Book marked Complainant's Exhibit 54 for Identification.

Q. You referred the other day, Mr. Spear, to a book called Accounts Payable No. 4, and described the period which it covered. I show you a book, Accounts Payable Ledger, New York & Queens Gas Company, which is marked now Book No. 3, which on the side is marked in ink No. 4. Is that the Accounts Payable Ledger No. 4 to which you referred?

A. It is. The printer made a mistake in that "3" and we put a paster on it which came off this noon.

Q. But this is the Accounts Payable Ledger which covered the period which you described on last Monday?

A. It is.

Q. And it is the only ledger of that kind which the company had covering that period?

A. It is.

Q. What about the handwriting in that book, so far as you can identify it?

A. Mrs. Townsend, Mr. Foy. Those seem to be the only two handwritings in this book.

Mr. Ransom I ask to have Accounts Payable Ledger No. 3 marked for identification.

85 Book marked Complainant's Exhibit 55 for Identification.

Q. I show you a book called General Cash No. 3, New York & Queens Gas Company General Cash Book. Is this the General Cash Book concerning which you testified last Monday, and does this book cover the period which you then described?

A. Yes, sir.

Q. What about the handwritings in that book?
A. Miss Mold, Mr. Raynor and Mr. Foy.

Mr. Ransom: I ask to have this marked for identification.

Book marked Complainant's Exhibit 56 for Identification.

Q. Mr. Spear, in Complainant's Exhibit 52 for Identification and these ensuing exhibits I find various headings or titles or designations of accounts which are brought together in the index to Complainant's Exhibit 52 for Identification, showing the pages on which the particular accounts appear. Are those account headings taken from the uniform system of accounts?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: I make the same objection.

A. Yes, with the exception that the uniform system of accounts calls for an amortization account. We carry a renewals and replacement account. Then we have an automobile repair account which they do not have.

Mr. Neumann: I renew my objection after the witness' answer.

86 The Master: And I renew my ruling.
Mr. Neumann: Exception.

Q. Is there any one account in the uniform system of accounts known to you which covers the matter of automobile repairs?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: What is the proper way of proving it?

Mr. Neumann: This witness doesn't know anything about the uniform system of accounts.

The Master: What is the proper way of proving it?

Mr. Neumann: By some one who is familiar with the uniform system of accounts, an accountant.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No.

Q. There is an account in connection with stable expense in the uniform system of accounts?

A. Yes, sir.

Q. But you also keep a subdivided account called automobile repairs or expense?

A. Yes.

Mr. Neumann: I object to that on the same grounds.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. (continued). That is a separate account, automobile repairs.

Q. And to that account you charge automobile repairs?

A. Yes.

87 Q. Do all vouchers for expenditures go through your hands before they are entered in the general books of the company?

A. They do.

Q. How are checks signed for outlays of money by the New York & Queens Gas Company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the best way of proving it.

The Master: What is the best way?

Mr. Neumann: The checks themselves.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. They have to be signed by two officers of the company.

Q. What is the regular course?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The general bookkeeper brings me a statement of all the sundry creditors' bills, and I check it up, telling him what accounts to pay. Then he draws a check and submits it to Mr. Raynor, who checks the bills with the account on the stub of the check, and initials the bill so it won't be passed a second time. It then comes to me. I check the account on the stub of the bill with the bill—sometimes there are several bills, and they are all entered on this stub and totalled. I check the total to see that it is right, and initial the bill so it will not be passed again, and sign the check.

The Master: Who else signs the check?

The Witness: Mr. Raynor signs it first, and I sign it second.

Q. How is coal, generator coal, purchased by the New York & Queens Gas Company. Do you as an officer of the company, 88 or any other officer of the company as such, make a direct contract for the supply of anthracite generator coal?

Mr. Neumann: I object to that on the ground that no foundation has been laid for this witness to testify. The witness may not know anything about it. He should be qualified first.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Deegan: And the contract would be the best evidence.

The Master: Objection overruled.

Mr. Deegan: Exception.

Mr. Tobin: Is it not intended by this witness to show the method of business, and not the actual transaction, and that that is as far as these questions and answers are supposed to go?

The Master: That is my understanding, and that is why I have overruled the objection.

Mr. Neumann: They evidently seem to go deeper.

Mr. Tobin: That is the point I wanted to make, that they are not intended to prove.

The Master: I overrule the objection because I understood the question called for a course of dealing, a method.

Mr. Ransom: I am disclosing, as a first step in this case, the method under which the transactions of this company are carried out.

The Master: I understand from the witness' testimony that coal is brought from the Consolidated Gas Company.

89 Q. That is, a contract is made by the Consolidated Gas Company instead of by your company?

A. It is.

Q. How do you get the coal that you want?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. When you need anthracite coal what is the process?

A. We send one of our regular orders to Mr. Gilbert Francklyn, engineer of distribution of the Consolidated Gas Company.

Q. Is that done by you?

A. It is.

Q. You send an order for the quantity of coal which you think is needed?

A. Yes, sir.

Q. How is that coal paid for, is it paid for by your company, or is it paid for directly to the company selling the coal, or is it paid by you to the Consolidated Gas Company?

A. We are billed direct by the coal company, and a check is sent direct by us to the coal company.

By the Master:

Q. You get the deliveries direct from the coal company?

A. Yes.

Q. Your requisition goes through the Consolidated to the coal company?

A. Right.

A. And the coal company delivers the coal to you?

A. That is right.

90 Q. The price at which it is delivered has been arranged theretofore by the Consolidated Gas Company officials?

A. Yes, sir.

Q. But the coal comes to you from the coal company and you pay the coal company for it?

A. Yes, sir.

Q. At a price which had already been fixed?

A. Yes. That is only in the case of generator coal.

By Mr. Ransom:

Q. What about boiler coal?

A. I order that direct from the New York Edison Company, who have a contract for large quantities of coal.

Q. Do you use a relatively large quantity of boiler coal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within the province of this witness, to characterize relatively large or small. He can tell what the quantity is, and then the Master can draw his conclusion.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: It was understood that he was simply going to indicate the system or method of doing business and not show the extent of coal purchases, or the quantity of coal needed.

The Master: It will not do any harm to have him say they don't buy very much.

A. No.

Q. How is the payment for this boiler coal, such as you buy, handled?

91 A. The New York Edison Company bills us, and our check is sent to them.

Q. That is, you receive a bill from the New York Edison Company?

A. Yes.

By the Master:

Q. Who fixes that price?

A. The purchasing agent of the Consolidated Gas Company.

Q. In other words, you pay the price that the Consolidated Gas Company's purchasing agent tells you he has arranged?

A. Yes.

By Mr. Ransom:

Q. How do you get oil, how is that handled?

A. We are included in the contract made by the Consolidated Gas Company, and when we need a cargo we send an order direct to the Standard Oil Company of New Jersey.

Q. That is, your requirements are figured in on the Consolidated contract?

A. They are.

Q. What is the course by which you get oil when you need it, what do you do?

A. I send over one of our regular orders to the Standard Oil Company, ordering so much oil, and stating the date when I want delivery.

Q. That is, you send orders for oil directly to the Standard?

A. That is right.

Q. Within the quantities specified in the contract as for your company?

A. I don't quite get that.

Q. When a contract has been made up of the Consolidated with the Standard Oil Company of New Jersey, or from whatever other company the Consolidated procures oil, your requirements have been included?

A. They have.

Q. And you send orders to the oil company against that quantity.

Mr. Tobin: I object to that. It calls for a conclusion of the witness.

The Master: Yes, but it will not do any harm.

Mr. Tobin: Exception.

A. Yes.

Q. Who bills you?

A. The Standard Oil Company.

Q. And you pay directly to the Standard?

A. We do.

Q. Are these requisitions for the different kinds of coal sent by you to the various persons whom you have described—do they pass through your hands?

A. Yes.

Mr. Tobin: If we may ask, if your Honor please, as to the dates of these various forms—

Mr. Neumann: He hasn't got to that yet.

Q. Has the Public Service Commission for the First District prescribed a form of report for the annual report of this company among other gas companies?

A. They have.

Q. And have annual reports to the Public Service Commission been made on the prescribed form by the New York & Queens Company since your connection with it?

Mr. Neumann: I object to that on the ground it is incompetent irrelevant and immaterial and not within the province of this witness to say whether the reports are as prescribed by the Public Service Commission.

93 The Master: On the prescribed forms, he said.

Mr. Neumann: No, he went further than that.

(Questions read by stenographer.)

The Master: You see I was right in my statement. I will let the witness say he made reports on the forms prescribed.

A. Since 1907.

The Master: As far back as 1907?

The Witness: Yes.

Q. Have these annual reports been made up under your direction and supervision?

A. They have.

Q. And made up from the books of account here produced, and the other records to which you have referred?

A. Yes.

Mr. Ransom: I offer in evidence a certified copy of an order of the Public Service Commission, Order No. 728, filing order, prescribing a form of annual report to be filed by gas and electric corporations subject to the jurisdiction of the Commission.

The Master: Is there any objection?

Mr. Neumann: No.

Copy of order received in evidence and marked Complainant's Exhibit 57.

Q. Are the expenditures of the complainant company audited and approved in any manner, Mr. Spear?

A. Yes. They are approved once a month by an auditing committee of two.

94 The Master: Was there any subsequent order after this, Judge Ransom? This seems to provide for the 1907 report.

Mr. Ransom: I think under the authority of that order the chief statistician of the commission sends out each year a form of report.

The Master: This simply says, "Ordered that every corporation shall on or before October 31, 1908, make and file with the commission a report on said form for the six months ending December 31, 1907." That is all it says.

Mr. Ransom: The annual report, I believe, is required by statute, and that is the authority under which the form has been prescribed by the chief statistician of the commission.

The Master: The point is that that order seems to limit the prescribed form to that particular year.

Mr. Vilas: The first paragraph says that the form prescribed by the statute is adopted.

Mr. Ransom: The first paragraph is:

"The form for reports of all gas and electric light corporations subject to the jurisdiction of the commission as the terms are defined in Section 2 of the Public Service Commission law, as the said form has been prepared by the chief statistician of the commission, be and the same is hereby approved and prescribed by the Commission for the First District."

Now, the law required an annual report, and my impression is that under the authority of the adoption of that form the 95 chief statistician and the secretary each year send out a form of report.

The Master: The form of report that your company has made has been supplied by the Public Service Commission from year to year?

The Witness: That is right.

The Master: You don't print it yourself?

The Witness: No.

The Master: Or prepare it yourself?

The Witness: No.

The Master: The report is furnished by them.

The Witness: It is.

Q. They furnish you copies so as to create duplicate originals, do they not?

A. They do.

Q. One of them you retain and the other you file?

A. Yes.

Q. They are filed under oath, signed by the treasurer of the company?

A. Occasionally it has been. I have signed some of them.

The Master: By an officer of the company?

The Witness: Yes.

Q. Now, this auditing committee of two, what is turned over to them each month, among other things? First, who are they?

A. Edgar Palmer and H. M. Brundage.

The Master: How long had they been the auditing committee, for several years?

The Witness: About six years, I would say.

Q. Mr. Brundage was for some years one of the assistant secretaries of the Consolidated Gas Company?

96 A. Yes.

Q. And is now the secretary?

A. Yes, sir.

Mr. Neumann: Why not show where the auditing committee gets its authority from. There is nothing here to show.

Q. To whom does this auditing committee render its report?

A. To the board of directors, and receives its authority from the Board of Directors.

Q. Of the New York & Queens Gas Company?

A. Yes, sir.

New York & Queens Gas Company?

A. Yes, sir.

Q. What is turned over to the members of this auditing committee at their monthly audit or examination?

A. Cancelled checks—

The Master: Do they make monthly audits and examinations?

The Witness: Yes, sir.

Q. What is turned over to them?

A. The cancelled checks, the cash book, the trial balance book and the general ledger. They check all the vouchers against the

cash book and the trial balance book against the balances in the ledger.

Q. Do they report each month's audit to the next meeting of the Board of Directors of the company?

A. Yes, they sign a certificate, make out a certificate, sign it and give it to me, and I present it to the Board of Directors.

The Master: They do that between meetings, do they?

97 The Witness: Yes, it is just before the Board of Directors meeting that they make the audit of the previous month's accounts.

Q. And does the Board of Directors take action with respect to the report of this auditing committee?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it may not be within the province of this witness to testify to that, so far as this record shows.

The Master: It would be binding on the public, but I will take it as not being especially important.

Mr. Neumann: Exception.

A. Yes.

Q. And are these monthly reports of the auditing committee and the action of the board of directors thereon subsequently submitted to the annual meeting of the stockholders of the company?

Mr. Neumann: Objected to on the same grounds.

Mr. Tobin: Objected to.

The Master: I will take it.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. They are.

The Master: I am taking this line of testimony simply as indicating the way the business of this company is conducted.

Q. For the opening of streets and the laying of mains is it necessary to obtain certain permits from municipal authorities?

A. Yes.

Mr. Neumann: Objected to.

98 Q. What permits are obtained?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: The witness has not shown any qualifications for this at all.

The Master: He knows whether or not he can open a street for his company without getting a permit, or whether the policeman will nab him by the back of the neck for opening it without showing a permit.

Mr. Neumann: I renew my objection.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Just what is done with respect to a proposed main?

A. We have to make a sketch showing the position in the street that we want to lay it in. That is submitted to the Bureau of Sub-structures.

Q. That is the Sub-Surface Structures?

A. Sub-Surface Structures, who approve it if it is in the right location; then—

Mr. Neumann: I move to strike that out on the ground it is a pure characterization. The witness has no right to testify to that.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: They approve it if they think it is in the right location?

The Witness: They have a certain position. For instance, we have to lay our mains all on the east and south sides of the streets, and they have locations for all other sub-surface structures, and they give us that position in the ground. Then it goes from there to the Department of Water Supply, Gas & Electricity, who grant a permit. From there that permit is taken to the Bureau of Permits, of the Borough President's office, who issue the final permit.

The Master: You are talking now about permits of the bureaus of the City of New York?

The Witness: Yes, sir.

Q. Mr. Spear, do you have charge of the matter of the rates of pay of employees of the company and the various departments?

A. I have.

Q. As to the works and shops, do you hire and discharge the men, is that done by the head of the department?

A. It is done by the heads of the departments.

Q. Under your direction?

A. Yes, sir.

Q. But the matter of the rates of pay is in your hands?

A. Yes. Men are not discharged any more though.

Mr. Neumann: I move to strike that out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What is the procedure in the case of a contemplated extraordinary or unusual expenditure?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and does not mean anything on the record—extraordinary or unusual expenditure.

Mr. Ransom: I mean an expenditure out of the ordinary run in carrying on the business, or of an extraordinary amount.

100 Mr. Neumann: First prove what the ordinary run is, and then that this is extraordinary or that others are extraordinary.

By the Master:

Q. What is the procedure as to the usual run of expenditures, that is the pay of labor and things of that sort; how is that done?

A. I pass on that individually, and authorize it.

Q. Are there any expenditures that are in a class by themselves?

A. Yes.

Q. And separately handled?

A. If an expenditure runs up to a thousand dollars in the particular purchase or work that we want done, I take it up Mr. R. A. Carter, who is our Treasurer, and talk it over with him. If he approves it I go right ahead with it and then have it approved at the next board of directors' meeting.

Q. In other words, you feel when an expenditure gets to about a thousand dollars you do not use your own judgment?

A. That is right. And then if it is possible to wait until our board of directors' meeting, I would wait and take it up with them.

Mr. Tobin: If the Master please, might we ask that the witness indicate just the reason for taking those expenditures up with Mr. R. A. Carter?

The Master: Why, yes, I will give you plenty of opportunity to cross examine and ask about that.

Mr. Ransom: Mr. Carter is the Treasurer of the company and has been for some years.

The Witness: Yes, I so stated that.

101 Mr. Tobin: You ought to have in mind, if the Master please, whether that is provided for by the by-laws or some rules.

The Master: I will ask the witness that.

Q. Is that in pursuance of a by-law or is it just a general understanding and practice?

A. A general understanding and practice.

By Mr. Ransom:

Q. That is, there is no specific provision of the by-laws which fix a definite amount at which you shall get the judgment and approval of other officers of the company or of the board of directors?

A. No.

Mr. Neumann: Would not the by-laws be the best proof of what the officers' duties are and how far they can go, rather than the witness' testimony. It is the same as an agent proving his own authority.

The Master: There may be some force in that, but it cannot do any harm in this case. The important thing is to find out what it costs to make and distribute gas.

Mr. Neumann: Still that old stuff.

The Master: It is the only thing in this case. You might as well understand it; all these side issues and side-plays pass over me like water from a duck's back; they mean nothing to me.

Q. Mr. Spear, aside from coal and oil how are materials and supplies purchased by the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and if there is anything in the by-laws of the company or the minutes of the meetings of the directors, that would be the best way of proving it, rather than by this witness' testimony.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. If it is a large purchase I get competitive prices and place the order.

Mr. Neumann: Now I move to strike that out.

Q. You obtained bids?

A. Yes.

Mr. Neumann: One moment. I move to strike that answer out on the ground it is a conclusion. What he does with reference to getting bids is all right, but not to characterize it as competitive bidding. It may or may not be.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: I take it you mean, Mr. Spear, that you ask several different concerns in the same line of business to tell you what they will sell you material for?

The Witness: Yes. Take, for instance, cast iron pipe. We get three or four bids on that, if we have power to buy, and I take it up with the purchasing agent of the Consolidated Gas Company and ask him what prices he has got, so as to get a general line on the market. The purchasing agent of the Consolidated Gas Company is the man who figures all the time from current prices.

Q. Before awarding contracts you have the benefit of his knowledge and opinion regarding prices?

A. Yes.

103 The Master: Do you try to buy as cheaply as you can?

The Witness: Oh, yes.

Mr. Neumann: One moment. That was too fast for me.

The Master: Don't you like that, either?

Mr. Neumann: I want to object to that.

The Master: Why?

Mr. Neumann: Because I do not think this witness can testify to that in this way. He has testified now to a general course of business and he is testifying whether he buys as cheaply as anybody else.

The Master: I did not ask him that at all; I asked him if he tried to.

Mr. Neumann: It is practically the same thing.

The Master: The objection to the Master's question is overruled.

Mr. Neumann: Exception. That may appear before the answer is given?

The Master: It will be taken as having been made in time.

Q. Mr. Spear, have you at my request made up sheets showing the rates of pay, the wages paid in the various departments of the New York & Queens Gas Company, from 1911 to 1920, as known to you and as checked by you from the payrolls of the company?

A. I have.

Q. And is this such a sheet which I now show you (handing witness)?

The Master: You are showing him two sheets, are you not?

Mr. Ransom: Yes, two sheets, sheets 1 and 2.

A. Yes, that is the schedule.

104 Q. Prepared by you?

A. It was.

Q. And known by you to be correct?

A. It is.

Q. In the left hand column you have shown the classification of work, have you?

A. Yes, the classification of the men.

Q. Yes, the classification of the different kinds of men, under the various departments—the gas works or gas manufacturing department, the shop department and the mains and services department?

A. Yes.

Q. And then have you shown—

Mr. Tobin: If the Master please, we object to the question in that form. We believe that if he is going to refer to this paper he ought to say it is indicated on the paper, instead of being shown on the paper. We do not want him to attempt to prove the contents of that paper in just that way. It is indicated on this paper, certain things

Mr. Neumann: I have a further objection, if the Master please. This witness has not as yet been qualified on this particular branch of the case. So far as his present qualifications are concerned, he has practically no qualification in the bookkeeping end of the business.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. And have you shown the number of men and the rates of pay in cents per hour for each of these classes?

105 Mr. Tobin: If the Master please, in that form of the question I object to the number of men.

Mr. Cummings: Just ask him what it shows.

Mr. Tobin: What it indicates, instead of what it shows.

The Master: That is not important.

Mr. Tobin: He cannot attempt to prove a paper in that way.

Mr. Neumann: As a matter of fact, all these questions are incompetent if he attempts to introduce the paper in evidence, because the paper will speak for itself, rather than introducing it now.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. Is that correct, Mr. Spear?

A. It is.

Q. And you have shown this information as of January 1, 1911, January 1, 1914, January 1, 1918, January 1, 1919, and April 17, 1920?

A. Right.

Q. On Sheet 2 have you recapitulated this information by years showing the number of men in the three departments and the maximum and minimum and average rates of pay for each of those years, and the increase in the average rates of pay per year, between January, 1914, and April 15, 1920, and between January, 1911, and April 15, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not from a properly qualified witness.

The Master: Objection overruled.

Mr. Neumann: Exception.

106 A. Yes, it shows the recapitulation by departments and also by all the departments together.

Mr. Tobin: If the Master please, we still insist upon our objection to the form of the question. We do not think it is proper.

The Master: Yes. Overruled.

Q. And in a note on Sheet 2 have you correctly shown the rule of the company and its practice with respect to paying for overtime, holiday and Sunday work?

Mr. Neumann: Same objection.

A. We have.

Q. And the time when that went into effect?

Mr. Neumann: Same objection.

A. Yes.

The Master: I take it you mean the fact that those extra prices are paid for that kind of work?

Mr. Ransom: Yes.

The Master: Not so much a rule.

Q. You have a regulation on that subject.

A. Yes.

Mr. Neumann: Objected to.

The Master: Do you in fact make those payments?

The Witness: We do, actually.

The Master: It is not a question of a rule.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving a rule.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And this is correct to your knowledge?

A. It is.

107 Mr. Ransom: I offer in evidence Sheets 1 and 2.

Mr. Tobin: We object to that.

Mr. Neumann: Wait until we look them over first.

Mr. Ransom: I will give you copies (handing counsel two sets).

Mr. Neumann: May I proceed with my objections and have the Master wait until the rest of the defendants are through with their objection?

The Master: You may.

Mr. Neumann: Objected to on the ground that these exhibits are immaterial, irrelevant and incompetent.

The Master: It is one exhibit. You mean those two sheets.

Mr. Neumann: Sheets 1 and 2. They have not been offered for identification, have they?

The Master: No. They will be known as Sheets indicating wages paid by the New York & Queens Gas Company, 1911 to 1920.

Mr. Neumann: Yes. Upon the ground that they have not been properly proven, not proven by a witness who has any knowledge of the subject; upon the further ground that they are based upon entries in the books which have not yet been admitted into evidence.

Mr. Tobin: We add to those objections the further objection that the best proof of the facts are the books of the company, and that these items should not be allowed to go into evidence in this way.

108 Mr. Neumann: May I add one further objection, that the best evidence of this would be the payrolls themselves as of those dates.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Marked Complainant's Exhibit 58 (consisting of two sheets).

Q. M. Spear, have you prepared the statement which I herewith show you, which shows in summary form the prices paid by the New York & Queens Gas Company for coal, both generator coal and boiler coal, for the years 1911, 1914, 1915, 1916, 1917, 1918, 1919, and three months of 1920 (handing witness)?

A. Yes.

Q. You were familiar with the prices in those years?

A. Yes, that statement is made up right from the invoices.

Q. And in this sheet you have shown the number of tons shown on the invoices?

Mr. Cummings: Your Honor, I think the witness ought to state what the sheet indicates.

Q. What does the first column show?

The Master: No, I am going to let him lead him.

Q. That is the total number of tons?

A. It is. The total number of tons received during that year.

Mr. Neumann: This is all over our objection, if the Court please.

The Master: Yes.

Q. And in the next column the amount of money paid?

109 A. Yes.

Q. And in the next column is the amount of money divided by the number of tons?

A. Yes, the cost per ton.

Q. The two columns headed "Stevedore," what is meant by that?

A. Our coal is carted from the docks to the yard by a stevedore and he renders a bill for that.

Q. So this stevedore charge per ton is the amount paid for stevedores' services, divided by the number of tons?

A. Yes.

Mr. Neumann: Our objections, of course, are still running all through this line of examination.

The Master: Yes.

Q. And the total cost per ton is the price paid for the coal, the invoice price plus the stevedore charges?

A. Yes.

Q. And then in the column to the right or the columns to the right you have shown by years the percentages of increase over corresponding years?

A. Yes.

Q. And the questions I have just asked you related to generator coal. The same method of making up the table has been followed with reference to boiler coal?

A. Yes.

Q. As to gas oil for the same years you have shown the total number of gallons?

A. Yes.

Q. And the total amounts paid?

A. Yes.

110 Q. And the price?

A. Yes.

Q. And the percentage of increase for each year over corresponding years?

A. Yes.

Q. And this is known to you to be correct?

A. It is.

Q. It was checked by you with the original bills and vouchers?

A. It was made up by me from the original bills and vouchers.

Q. And you have the original bills and vouchers here?

A. I have.

Q. With you, in court?

A. Yes.

Q. And this is known to you to be correct?

A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Tobin: If the Master please, I do not think that is a fair way to introduce into this trial items which are going to be so important in ascertaining what you desire to ascertain—that is, what is a proper rate.

The Master: You say all these vouchers are in court?

Mr. Ransom: The vouchers are here.

The Master: Hold this until you offer the vouchers.

Mr. Tobin: The books are all here, the vouchers are here.

The Master: Do not spend any time on it; I am asking him to produce the vouchers.

Mr. Tobin: We object to the introduction of that at this time.

The Master: Well, I am holding it for the time being. I 111 am inclined to agree with you.

Q. Will you produce the vouchers?

The Master: And the stevedore vouchers, too, I suppose.

The Witness: Yes.

The Master: Have you them with you?

The Witness: Yes.

Mr. Ransom: Suppose I just lay this aside for a moment and cover the other things, because there are other things covered by these sheets.

Mr. Tobin: May I say a word here, please. I understood this witness was going to tell us the method of doing business.

The Master: Yes.

Mr. Tobin: And that they were not going to have offered by him or through him the actual accounts—that is, how things were paid, or just what did happen—that all he was going to tell us was just the method of doing business.

The Master: I did not so understand it. Up to a certain point I understood that was going to be his line of inquiry, but I did not know it was going to stop there.

Mr. Ransom: I am laying a foundation for all of this.

Mr. Neumann: When did he get beyond that? And another point, where has Mr. Spear's qualifications been shown on the accounting end of the business? If you will look over his qualifications—I read them very carefully—he is a chemist and he makes a sort of cursory supervision of the bookkeeping end of it; 112 he has never had any practical experience in the bookkeeping end of the business and does not attempt to say that he ever kept any books.

Mr. Ransom: He has done various things in that regard.

The Master: Proceed.

Mr. Tobin: We object.

Q. Mr. Spear, in the same way have you made up a sheet headed "Comparison of prices paid for materials by the New York & Queens Gas Company from 1914 to 1919 inclusive," covering the principal materials purchased by the New York & Queens Gas Company for its gas business in those years?

A. Yes.

Mr. Tobin: Just a moment. What was the first part of the question?

Mr. Ransom: Have you made up a statement?

Mr. Tobin: I think it is decidedly unfair in the form of the question, if the Master please. The paper itself indicates something, and he should not be allowed to read in the record that it shows something. It indicates something.

The Master: Objection overruled.

Mr. Tobin: In other words, I do not see how he should be allowed to prove these facts in this way or attempt to prove them.

Q. In the left hand corner you show the names or kinds of materials purchased?

A. Yes.

Mr. Neumann: You purport to set forth.

Mr. Tobin: "You purport to set forth" is better, Mr. Ransom.

113 Q. In the next column is the unit according to which they are purchased?

A. Yes.

Mr. Neumann: I object to the form of the question.

Q. Per foot, per bushel, per pound and per gallon.

A. Yes.

The Master: Objections overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. And then in the remaining columns you have shown by years the prices paid in those years?

A. Yes.

Mr. Neumann: Same objection, in form and substance, both.

The Master: Same ruling on both grounds.

Q. The highest and the lowest?

A. Yes.

Mr. Tobin: If the Master please, I think it is decidedly unfair to allow him to go into this matter in this way. These are important factors.

The Master: They are not important at all.

Mr. Tobin: We deem them to be.

The Master: He has made up some summaries, that is all.

Mr. Tobin: But the books themselves are the best evidence.

The Master: One of the reasons why the courts are in such dis-

repute with the people is that so many judges pay too much attention to these fini-ky and useless objections.

114 Q. And in the last two columns you have shown the increase in 1919 over 1914 and the lowest and highest prices?

A. And the lowest and the highest.

Mr. Neumann: Same objection as to form and substance.

Mr. Tobin: Same objection as to form and substance.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. And you have in your hands the vouchers from which that was made up and checked?

A. No, I have not.

Q. You have not the vouchers on that?

A. Not on that.

By the Master:

Q. Have you got the vouchers back to 1911 on this other one?

A. Yes.

Q. All the way back to 1911?

A. That is 1911 and 1914, the same years indicated here. We skipped 1912 and 1913 on account of making so many.

Mr. Tobin: What years?

The Witness: 1912 and 1913.

The Master: On account of what, making some money?

The Witness: No, making so many.

The Master: This schedule apparently, Mr. Neumann, is based upon 1911—the one I was talking about is based on 1911, 1914 and other years, skipping 1912 and 1913. That is all he skips, 1912 and 1913.

Q. Referring to the same materials and supplies referred to in the schedules concerning which I have just interrogated you, 115 have you made up from the original bills and vouchers a comparison showing the prices per unit of these same materials in 1914, 1915, 1916, 1917, 1918 and 1919 (handing witness)?

A. Yes.

Q. That is correct to your knowledge?

A. It is.

The Master: You have not those vouchers here, have you?

The Witness: That would mean bringing every voucher we have got. That is compiled from all the vouchers.

The Master: Well, you have not got them here?

The Witness: No.

The Master: We better mark these for identification before we go any further.

Mr. Ransom (handing Master): This is the first one.

The Master: We will mark the paper "Comparison of Unit Costs

of Coal and Oil received by the New York Gas Company for the years 1911 and 1914 to 1919, inclusive, and three months of 1920."

Marked Complainant's Exhibit 59 for Identification.

By the Master:

Q. As to this Exhibit 59 for Identification you have all the vouchers for those years here?

A. I have.

Q. The next one is a paper which purports to show comparison of prices paid for materials by the New York & Queens Gas Company from 1914 to 1919, inclusive, and excluding coal and oil?

A. Right.

116 The Master: We will mark that for Identification.

The Witness: That is the highest and lowest prices for those years.

The Master: Highest and lowest, yes.

Marked Complainant's Exhibit 60 for Identification.

Q. Those vouchers are not here?

A. They are not.

The Master: The other paper you have got is a paper showing highest and lowest and comparison of prices for material paid by the New York & Queens Gas Company from 1914 to 1919. We will mark that for identification.

Mr. Ransom: Showing percentages of increase.

Marked Complainant's Exhibit 61 for Identification.

Q. What is the difference in the method of preparing Exhibits 60 and 61 for identification?

A. Exhibit 60 shows lowest and highest prices for those various years.

Mr. Ransom: All of those years.

A. (continued). Exhibit 61 shows the highest and lowest prices paid in 1914.

Q. Yes.

Q. And in 1919, and the increase over—

Q. In 1919?

A. In 1919 over 1914, of the lowest and the highest.

Q. Exhibits 60 and 61 for Identification depend upon the same vouchers?

A. Yes.

Q. They are not in court?

A. That is right.

117 By Mr. Ransom:

Q. These last two exhibits 60 and 61 for identification, with respect to standard wrought iron and steel pipe, the price given is the price less certain percentages?

A. Certain discounts.

Mr. Tobin: We object to the form of the question.

The Master: Overruled.

Mr. Tobin: Exception.

Q. Is this a correct statement of the list price on which those discounts are figured (handing witness)?

A. Yes.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving a list price.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Q. And that is true not only of the wrought iron and steel pipe but of the malleable fittings?

A. Yes.

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Mr. Ransom: I ask to have this marked for identification.

The Master: By "this" you mean the paper to which you have just referred?

Mr. Ransom: The paper to which I have just referred.

Marked Complainant's Exhibit 62 for Identification.

118 Q. Mr. Spear, referring to Exhibit 59 for Identification, you have here all of the various vouchers to which that relates?

A. I have.

Q. Those are vouchers which have hitherto been turned over to the accountants of the Public Service Commission?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Or at least those with respect to recent years?

A. The years 1918 and 1919, yes.

Q. And these are produced by you from the files of the company?

A. They are.

Q. They are known to you to be the vouchers which passed through your hands in those different years?

A. Yes. The accountants of the Public Service Commission were working with them to-day, and I took them from them to-day temporarily.

Mr. Ransom: I offer these coal and oil vouchers in evidence.

Mr. Tobin: What do you mean by that?

The Master: The whole batch.

Mr. Neumann: He is just offering the vouchers, not the exhibits.

The Master: We will mark them as one exhibit and put a rubber band around them.

Mr. Tobin: We make the general objection to them at this time, if your Honor please.

The Master: Yes. I will make this note on the record, that that will be marked "Coal and Oil Vouchers referred to in Complainant's Exhibit 59 for Identification," and they will be marked as one exhibit, Complainant's Exhibit 63. All vouchers will be Exhibit 63.

Marked Complainant's Exhibit 63.

Mr. Ransom: I now offer in evidence Complainant's Exhibit 59 for Identification.

The Master: No. 59 for Identification is offered in evidence. Is there any objection?

Mr. Neumann: Just a moment, if the Master please. May we be given an opportunity to look it over?

The Master: Surely.

Mr. Neumann: I will start the objections. I object to it on the ground it is incompetent, irrelevant and immaterial. The heading should be stricken out for the reason that it is not within the province of this witness to testify to those facts. The testimony thus far disclosed indicates that this witness makes no contracts for either oil or coal, that that is done by some one else; so that, if anything, this exhibit would be the same as if the witness were giving hearsay testimony of the same facts. For that reason I object to it. On the further ground that there is nothing to indicate that the information is accurate or correct. Upon the further ground that if this is intended to be a summary of the entries in the books, the books themselves would be the best evidence of it.

Mr. Tobin: We object on the further ground it is hearsay evidence, that the books, which have not yet been offered in evidence, are the best evidence of the facts, and it is not proper at this time for 120 the witness to testify to the contract prices in view of what Mr. Neumann said.

The Master: The objections are overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

The Master: The paper is marked in evidence.

Marked Complainant's Exhibit 59 in evidence.

Mr. Ransom: I think that is all with Mr. Spear.

The Master: Do you gentlemen want to proceed with the cross examination now or reserve it?

Mr. Tobin: Reserve it, if we may.

The Master: All right.

Mr. Ransom: I shall have Mr. Spear produce these other vouchers.

The Master: Yes, bring them all down.

Mr. Neumann: You are not through with Mr. Spear yet on direct, Judge?

The Master: Apparently not, but that is no reason why you gentlemen should not be prepared to cross examine on all matters that have already gone in.

Mr. Neumann: For the purpose of saving time it would be better to go over his cross examination at one time.

The Master: Yes, but when he gets through with his direct now you will go ahead with his cross.

Mr. Tobin: Yes, sir.

Mr. Neumann: I understand.

Mr. Tobin: Of course, there is a statement on the record there, if your Honor please, that after all this documentary proof was put in you were going to grant us an adjournment so that we might get ready for cross examination.

121 The Master: I gave you four or five days this week already.

Mr. Neumann: But since then he has put in a great deal more, and things that are more vital to the case.

The Master: Yes, but I am not asking you to go on with the examination yet.

ARTHUR W. TEELE, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom

Q. Mr. Teele, where do you reside?

A. 131 Riverside Drive, New York City.

Q. What is your business?

A. A public accountant.

Q. With what firm are you connected or of what firm are you a member?

A. I am senior partner of the firm of Patterson, Teele & Dennis.

Q. And where are the offices of that firm?

A. 120 Broadway, New York, and 131 State Street, Boston.

Q. Do you have any official standing in or are you a member of any associations dealing with this field of accountancy?

122 Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial, and at the present time it does not appear what "this field of accountancy" means.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I am Vice President of the American Institute of Accou-

of Accountants; a member of the New York State Society of Certified Public Accountants, and a member of the Ohio Society of Certified Public Accountants.

Q. And you are a certified public accountant of what states?

A. Of New York and of Ohio.

Q. And you are Chairman of the Board of Examiners of the American Institute of Accountants?

A. I am not now Chairman of the Board of Examiners.

Q. But you have been?

A. I am a member of that board, but I am not now chairman.

The Master: Mr. Neumann, you were in the Consolidated Gas case, were you not?

Mr. Neumann: I was.

The Master: Did you have occasion to inquire into the qualifications of Mr. Teele?

Mr. Neumann: I was not present when he qualified.

The Master: Have you any information about Mr. Teele?

Mr. Neumann: Well, is it the purpose of the question to ask whether I am satisfied with Mr. Teele as an accountant?

The Master: Why, yes, I see no reason for Judge Ransom being put to this hour or more of examination to qualify Mr. Teele, if as a matter of fact it will be conceded or should be that he is qualified to testify as an expert accountant. I never do it when I try a case. If a man is an accountant I admit he is an accountant.

Mr. Neumann: Speaking for myself only and not in any way binding any of the other defendants, I will say that in my judgment Mr. Teele is a qualified accountant, but that does not in any way bind the other defendants.

The Master: I understand that. I cannot save the time unless the other defendants are willing to make the same stipulation. I asked you because I knew you were in the Consolidated case. Mr. Tobin has not been and his associate here has not been.

Mr. Tobin: Why, I think, if the Master please, he might just qualify sufficiently so as to make the record. That is all we care about.

The Master: The trouble with that is Judge Ransom may feel that he has got to go the limit on the thing.

Mr. Tobin: No, we won't ask for that; we want sufficient on the record to prove his qualifications, then we will accept him. That is all there will be to it.

By the Master:

Q. Mr. Teele, you have been practicing as a certified accountant how long?

A. As a certified accountant since the law was passed in 1896. I have been practicing as a public accountant in New York City

.1.

Just give us the names of some of the companies whose ac-

counts you audited. In the first place, you were the 124 accountant in charge of this gas investigation that Governor Hughes was in, were you not?

A. I was accountant for the Stevens Legislative Committee which made the investigation at that time.

Q. And of which Governor Hughes was counsel?

A. Of which Governor Hughes was counsel.

Q. Just state some of the concerns whose accounts you have audited in the last two or three years?

A. The American Telephone & Telegraph Company, Adams Express Company, the Southern Railway Company and all its affiliated lines.

Mr. Ransom: The Chicago, Rock Island & Pacific?

The Witness: I have audited the Chicago, Rock Island & Pacific lines, complete lines, on two separate occasions.

Q. Did you testify as an expert in the case of Consolidated Gas Company against Newton and others?

A. No.

Q. Before me as Master?

A. Oh, yes. Pardon me, your Honor, my mind was going back a little beyond that. I did.

Q. And the Master in that case accepted your testimony as an accountant as an expert?

A. I believe he did.

The Master: Do you think we ought to have any more on that, Mr. Tobin?

Mr. Tobin: That is all, sir.

The Master: As I understand it, no question is raised as to the competency and qualifications of Mr. Teele to testify as an 125 expert. That does not concede at all that his conclusions are correct or that his figures are correct, or anything of that sort. It simply means he is an accountant able to testify on the matters on which he is called.

By Mr. Ransom

Q. Mr. Teele, in the latter part of 1918 or early in 1919 were you employed by the New York & Queens Gas Company and, if so, for what purpose?

A. I was employed in the latter part of 1918, the last week in December, to make an examination of the Consolidated Company and its affiliated companies, including the New York & Queens Gas Company, and I did subsequently make an examination of the accounts of the New York & Queens Gas Company for the year 1919 and for 1918.

Q. Did you work alone or did you have one or more men working with you and under you in this work on the books and accounts of the New York & Queens Gas Company?

A. I had a staff of assistants working with me and under my direction.

Q. Who were your assistants, were they men of your own staff and your own selection, or were they employees of any gas company?

A. No, they were men who were employees of my firm. They were men of my own selection, men who, most of them, had been associated with me for a number of years.

Q. Could you name any of them?

A. Mr. Morean, who has been with me for ten or more years; Mr. Littlejohn, who has been with me about ten years, and some of the junior assistants on the staff.

126 Q. Mr. Stumpfel, one of your partners, did some of this work?

A. The examination was originally started under the immediate direction of one of my partners, Mr. W. H. Stumpfel, carrying out the directions which I had given to him.

Q. That was before or about the time the bill of complaint was filed, and related to the year 1918?

A. Related to the year 1918, and that work was done about February, 1919.

Q. How much of your time since the beginning of this suit of the New York & Queens Gas Company have you personally given to this work?

A. I have given considerable time to it. I have been at the offices of the New York & Queens Gas Company. I have personally done a considerable amount of the work in making the examination of the books. I should say that I had spent in the neighborhood of ten days myself.

Q. That is at Flushing, at the office?

A. At Flushing and in my own office in New York.

Q. Some of the work has been done in the rooms in 15th Street in which this work has been going on?

Q. I believe nothing in connection with the New York & Queens has been done there. There may have been some work done there, but very little of it. Most of it was done at the offices of the company at Flushing, and some of the statements were gone over by me and instructions given in connection with them at my own office at 120 Broadway.

Q. And you have been in constant and direct personal contact with all phases of this work?

A. I have.

127 Q. And the men, your assistants, worked under your immediate direction and personal supervision?

A. They did.

Q. Now will you state just what books and record of the New York & Queens Gas Company you examined and used in this work, directing your attention now to the year 1919?

A. The general ledger, the general journal and the general cash book. The operating expense ledger and the various reports, including pay rolls and vouchers relating to the entries made in the general journal, from which all postings are made to the general ledger,

together with the reports made by the superintendent at the works and the records of manufacture at the works.

Q. The records referred to by Mr. Spear last Monday?

A. Yes.

Q. In the course of your examination of the books, accounts and records of the complainant, did you find various printed forms and devices used by the complainant for recording the various transactions of its business?

A. I did.

Q. Have you examined those forms?

A. I have.

Q. In your judgment are these forms adapted to recording correctly in the regular course the transactions of the complainant company's business?

A. They are.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: The witness is simply asked for his judgment as to whether they are adapted to accurately recording; not whether they actually do. I will overrule the objection.

Mr. Neumann: Exception.

The Master: I understand the witness' answer is that they are?

The Witness: They are.

Q. Would you say they were well designed for that purpose?

Mr. Neumann: Same objection.

Mr. Tobin: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. In your opinion are the books and records and accounting system of the complainant company so designed that if entries are correctly made therein and they are properly kept will correctly reflect the business of the complainant company?

Mr. Neumann: Same objection.

Mr. Tobin: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

The Master: The form of the books is not so important, is it, Mr. Teele, if the entries are correctly made?

The Witness: That is all, if the entries are correctly made, and the classification of accounts is designed to bring out the facts sought.

Q. Mr. Teele, you prepared two statements, one showing the revenues and expenses of the gas business of the New York & Queen-

129 Gas Company for the year 1919? and the other showing the cost of manufacture and distribution of gas by the New York & Queens Gas Company for the year 1919?

A. I did.

Q. This is the statement showing the cost of production and distribution for the year ended December 31st, 1919 (handing witness)?

A. Yes.

The Master: We will mark that for identification.

Marked Complainant's Exhibit No. 64 for Identification.

Q. And this is the revenues and expenses of the gas business for that year (handing witness)?

A. Yes.

The Master: Mark that for identification.

Marked Complainant's Exhibit No. 65 for Identification.

Mr. Ransom: Copies of these two statements were furnished to the defendants some weeks ago.

The Master: Is it conceded that copies of these were given to the counsel for defendants several weeks ago?

Mr. Tobin: Just the 1919?

Mr. Neumann: I do not know, I would like to look them over.

The Master: I understand Mr. Tobin concedes he got 1919 several weeks ago.

Mr. Tobin: I believe they are the same. They are marked 8567 and 8566.

Mr. Ransom: That is right.

Mr. Tobin: On the bottom of the first page of the outside cover.

Mr. Ransom: Is there any question on behalf of the defendant commission that copies of these two statements were received 130 by Mr. Farley, counsel for the Commission?

Mr. Neumann: If they are the same that you sent me about a week ago, I will concede that you sent me papers purporting to be those.

Mr. Ransom: Well, several weeks ago.

Mr. Neumann: They are the same.

Mr. Ransom: They are the same as those sent to you several weeks ago?

Mr. Neumann: I will concede they were sent me and you have my letter of acknowledgment.

Mr. Ransom: I have your letter of acknowledgment some time after their receipt.

Q. Referring to Complainant's Exhibits 64 and 65 for Identification, Mr. Teele, and the preparation and verification of them by you, will you describe just what was done by you and by your assistants under your direction, and just what checks you made of the vouchers, underlying records and the books?

Mr. Neumann: One moment. Objected to upon the ground it is incompetent, irrelevant and immaterial, and the witness is now attempting to describe something taken from papers and books that are not yet in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If the Master please, we make the general objection. We do not believe that this sort of evidence should be introduced in this way, that the books are not yet before you.

The Master: I understand that, Mr. Tobin. I understand this inquiry to be as to just how Mr. Teele and his assistants made up this statement.

Mr. Tobin: That is what we were informed before, if your Honor please, that it was simply the form, but then we got further on and were advised that they had passed beyond the form and——

Mr. Neumann: Gone into the substance.

Mr. Tobin (continuing): Gone into the substance. We do not want to be caught in the same way. We raise this objection here. We believe the best evidence of what was done and the transactions of this company are the books themselves.

The Master: Yes, but Mr. Tobin, wait a minute, I want to help you keep the record straight and I want to keep it straight myself. Mr. Spear testified to a general course of operation, that is, the way they ran the business; then he identified some statements showing comparative prices and percentages. I did not allow in the comparative prices until he put in the vouchers, so that protected you there. The other papers are not yet marked in evidence, because he did not have his vouchers, so I am protecting you there. He has identified a lot of books that are not yet in evidence, because apparently the people who made the entries are available and the vouchers are available, so that is being held up.

Mr. Teele has now identified some tables he prepared, they have been marked for identification, the books are not in evidence, the vouchers are not in evidence, except the coal and oil vouchers, and these schedules are not yet in evidence, and I am not going 132 to let Mr. Teele testify to the figures, nor am I going to receive these schedules in evidence yet, but I am going to let him state how he did the work.

Mr. Tobin: Well, if it is confined to the form.

The Master: That is all.

Mr. Ransom: Not only the form, but what he did.

The Master: What he did.

Mr. Ransom: He made the tabulation.

Mr. Tobin: Of course, the part we particularly object to is the form of his questions. That is, he does not satisfy himself with asking the witness as to the manner in which they are made up, but he goes further than that, and we object to that and we wish a general objection.

Mr. Neumann: If the Master will just go back and have that question read over.

The Master: No, I heard it. Objection overruled. Mr. Teele, just tell us how you did your work.

Mr. Morissey: May it please the Court—

The Master: Who is addressing the Court?

Mr. Morissey: Mr. O'Brien—

Mr. Ransom: I object to anybody claiming to represent a man named O'Brien, addressing the Court?

The Master: Who are you?

Mr. Morissey: Joseph P. Morissey, an Assistant Corporation Counsel.

The Master: Your statement is what?

Mr. Morissey: Mr. O'Brien asked me to come over here and appear for the District Attorney of Queens County. As I

133 understand it there has been no order entered yet, but the District Attorney of Queens County has requested the Corporation Counsel to appear for him in this action. I don't know whether your Honor wants to rule whether we are yet in, or that we can sit in and act for the District Attorney.

The Master: My ruling will be that the District Attorney of Queens County has a right to have any counsel he wants to have here represent him.

Mr. Ransom: If he designated him—

The Master: I shall take Mr. Morissey's statement that he has been retained by the District Attorney of Queens County.

Mr. Ransom: He doesn't know anything about it, except that a man named O'Brien has sent him over here.

The Master: I shall take Mr. Morissey's statement that he is an attorney and an officer of the court, and has been retained by the District Attorney of Queens County to represent him here. Is that correct?

Mr. Morissey: That is correct.

The Master: Then you can sit in.

Mr. Ransom: I object to it. I don't think there is anything before the court under which your Honor is warranted in concluding that this proceeding on the part of Mr. O'Brien or Mr. Morissey is in any way warranted.

The Master: I am going to take this statement that he has been retained to appear as representing the District Attorney of Queens County.

134 Mr. Ransom: I take an exception. It is not a regular way for the appearance of the District Attorney of Queens County in the case. Mr. O'Leary has already made a designation which, so far as we have been notified by Mr. O'Leary is still in effect.

The Master: Well, suppose Mr. O'Leary wanted to retain John Stanchfield to appear for him, and John Stanchfield walked in here and said, "I am counsel for Mr. O'Leary," would you object to it?

Mr. Ransom: I should if there had been some previous designation of a counsel who had become solicitor of record in the case.

The Master: There is no change of solicitor of record in this case.

Mr. Ransom: Mr. Van Steenburgh has been designated.

The Master: Mr. Van Steenburgh is still the attorney of record,

but Mr. Van Steenburgh can retain Mr. Morrissey, or John Stanchfield, or anybody else, to appear for him. I shall stand by my ruling.

Mr. Ransom: Your Honor will allow me an exception?

The Master: Yes. Now, Mr. Teele, tell us how you did your work in making up the schedules to which your attention has been directed?

The Witness: This statement of revenues and expenses—

The Master: What is the exhibit number on that?

Mr. Ransom: Exhibit No. 65 for Identification.

135 The Master: And cost of production, Exhibit 64 for Identification?

Mr. Ransom: Yes.

The Witness: Exhibit 65 for Identification is a statement prepared from the accounts appearing on the Journal and Operating Expense Ledger of the company.

The Master: Did you use any other papers in connection with that?

The Witness: I verified the figures appearing in the various accounts entering into the figures shown on this statement by reference to the original entries appearing on the Journal; and as to materials purchased, or expenditures incurred other than labor, I referred to the original vouchers themselves.

By Mr. Ransom:

Q. Were all of the 1919 bills and vouchers examined by you and your staff under your direction?

A. They were.

Q. And all of the matters appearing on these two exhibits, so far as they relate to bills and vouchers for materials and supplies, were checked with the original vouchers?

A. They were.

Q. And then into the books of account likewise?

A. Then into the journal and from there into the ledger account from which these statements were compiled.

As to expenditures for labor, the company has three different pay rolls, office pay roll, works pay roll and shop pay roll.

The first pay roll—the distribution of the office pay roll—it has entries upon it, and the entries distributing that pay roll were 136 traced from the pay roll itself to the journal and from there to the ledger.

The shop pay rolls are distributed in accordance with the endorsements appearing upon the pay rolls, and the pay rolls themselves, the endorsements are made up by taking the monthly distribution sheets of the individual workmen whose names appear upon the shop pay rolls, and compiling those for the month. The total amount to be charged to each account is then endorsed upon the back of the shop pay roll.

A similar method is followed in the case of the works pay roll. The monthly distribution of each man's time is shown upon the sheet for each man. Those sheets are compiled, the total amounts

being charged for each account being the aggregate total pay roll for the month, is then endorsed upon the pay roll. The accounts to be charged, and the amounts to be charged against each account, are shown by this endorsement and entered in the journal, and from there posted into the ledger accounts.

Q. Then so far as the cost of labor, so far as the men in the manufacturing department and the other departments of the company are concerned, these exhibits 64 and 65 for identification have been checked both to the books and to the various pay rolls?

A. And to the various pay rolls.

Q. And the books were likewise, as postings, checked back to the pay rolls?

A. The postings appearing in the ledgers were checked back to their original sources.

Q. The postings in the ledger were traced back to their sources?

A. They were.

137 Q. What if anything was done by you to verify and check the correctness of these departmental pay rolls?

A. I have just stated how these pay rolls are compiled. We checked the monthly distribution sheets against the several monthly pay rolls, both the shop pay roll and the works pay roll. In the case of the shop pay roll I took four months in 1919, and went back to the individual daily workmen's time sheets. That is a sheet made out each day by the workman, indicating the work upon which he is engaged and the number of hours he was engaged upon that work.

Mr. Neumann: I object to that on the ground that there is nothing here shown as to this witness' knowledge and ability to testify as to what any particular workman did.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. (continued). I checked the four months of these individual sheets against the monthly sheets, and then checked all the monthly sheets to the monthly journal entries where the distribution of that time is indicated, and charged to the various ledger accounts.

Q. What about the works pay roll and the manufacturing department pay roll? What checks back did you make on those?

A. There is nothing, so far as I could find, back of the monthly sheets kept for each man.

Q. There is a monthly sheet kept for each man?

A. There is a monthly sheet kept for each man in which the days of the month are set down on the left hand side, and the accounts to be charged are at the tops of the sheets, and the time each day for each man is put on those sheets.

Q. And charged to different account numbers?

A. Charged to different account numbers.

Q. Those being the various uniform system of accounts lettered accounts, or by numbers?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and no foundation laid.

The Master: I will allow the witness to state if he will state, first, that he is familiar with the uniform system of accounts requirements.

The Witness: They are not indicated in that way, they are symbols.

Q. Symbols by numbers?

A. Symbols by numbers and letters, indicating accounts to be charged, and those are put upon the ledger account to identify the name of the account appearing on the ledger pages.

Mr. Neumann: That makes the objection all the stronger. It indicates that the witness is not as qualified to state whether the accounts are kept in accordance with the uniform system of accounts or not.

Mr. Ransom: I am not now asking him that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. It is from the monthly statement for the individual employees of the works department that the weekly pay rolls are made up?

A. Yes.

Q. What checks on employees, or the rates of pay, or the amount of pay for labor did you make as to any of the other departments?

139 A. There are no other departments other than the ones I have enumerated, the shop department, the works department and the office.

The Master: That is all there is?

The Witness: That is all.

Q. What did you do on the office pay roll, so far as checking there was concerned?

A. There are no records back of the monthly pay roll. The monthly pay roll has a sheet on which the weekly pay rolls appear, and the total pay rolls for the month. All the days of the month appear on one sheet, and they are divided by weeks, and at the end of a month, if there is a part of a week it is put upon two pay rolls, so that a single sheet covers one entire month.

Q. How did you ascertain the sales of gas and the revenues from the sales of gas?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, and not within the province of this witness so to say.

Q. Referring to Schedule 1 of Exhibit 65 for Identification?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The consumers' accounts for sales of gas are contained in nine ledgers. I took one hundred accounts for the months of January, February, November and December, 1919—

Q. That is one hundred in each month?

A. One hundred in each one of the ledgers on the district.

Q. That is, each of the nine consumers' ledgers represents a district?

A. Represents a district.

Q. A territorial district of consumers?

110 A. Yes. We took one hundred accounts in each one of those four months, January, February, November and December, and checked them from the original index books to the consumers' ledgers and to the bill registers, or consumption record, as it is called, in which the total amount of gas entered upon the consumers' ledgers is made up. We did that for four months, and checked the summaries for all the months in the year to the journals, and from the journals to the ledger accounts representing the sales.

Q. The index books being the books in which the readings are originally taken?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the further ground that the question is most leading.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: There isn't any use in making objections to questions as leading, as far as I am concerned.

A. The index books are the books which are used by the inspectors when they visit the meters, and in which they set down the reading of the meter.

Mr. Neumann: I move to strike out the answer on the ground that it is not within the province of this witness so to speak. He is an accountant and not a gas man.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. How did you ascertain the revenue, if any, from the furnishing of gas for municipal buildings?

141 A. Municipal meters are read the same as other meters.

Mr. Neumann: I make the same objection to that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. How about the revenue from prepayment meters?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The prepayment meters are read the same as other meters. The amounts collected by the collectors are listed on slips, and the amount of the reading of the meters is turned over to the bookkeepers. They summarize the total number of feet read, and compare that with the slips on which the money turned in by the collectors

has been listed, and the total amount of gas sold through the prepayment meters is summarized and taken up in the journal entries, the same as gas sold through commercial meters.

Q. And those were checked in connection with your check of other postings?

A. They were.

Q. Now, the matter of interest on bank balances, how did you check or verify that item?

A. The amount of cash that was credited in the bank accounts current rendered to the company.

Q. And interest on consumers' final bills, how did you check that item, although small?

A. It is the amount of cash that is reported as collected and deposited in the bank by the company upon the final bills rendered to consumers.

The Master: What do they do, charge interest on that?

142 The Witness: A final bill, if it has been held up and has not been paid promptly, they charge a small amount of interest.

Mr. Ransom: It amounts to \$5.44.

Q. Now, rentals from gas appliances—what did you do to check and verify the figures which you have shown on this tabulation, Exhibit 65 for Identification, as to that item?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The total amount of cash collected by the company during the year is reported as the rent of appliances. We accepted the amount of cash which they have recorded and turned into their bank accounts as rental on appliances. We did not go back of that.

Q. And, gross profits from sales of gas appliances?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The gross profit on sales of appliances is the balance carried in the account in the ledger to which are credited the proceeds of sales of appliances, and to which is charged the cost of the appliances as sold. We have examined the original invoices for the appliances purchased during the year, or the original inventories for appliances on hand at the beginning of the year, for those appliances which are credited to this account, to see if the amounts calculated as the cost of those appliances were correct. Having satisfied ourselves as to

the correctness of the cost of the appliances sold, we have
143 taken the balance of that account as correct, and have recorded it here as the profit on sale of appliances.

Q. There is a small item of interest on main contracts deposits, shown on Exhibit 65 for Identification?

A. My recollection is that is interest that is credited by the bank on moneys specially deposited under the main contracts. It is a very small amount.

Q. I notice on Exhibit 65 for Identification in parenthesis, following the different items, certain numbers, in some instances capital letters and numbers, such as 440, G 902, and the like. What do those indicate, to what do they refer?

Mr. Tobin: Counsel is attempting to introduce into the record something from an exhibit which is not yet introduced in evidence.

The Master: It is not terribly important.

Mr. Neumann: We object to it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. They indicate the corresponding account numbers in the public service classification.

Q. That is, the uniform system of accounts for gas corporations?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

By the Master:

Q. Are you familiar with that uniform system of accounts system, Mr. Teele?

A. I am more or less familiar with it.

Q. Are you familiar enough to be able to say that these symbols do refer to the accounts as prescribed by the Public Service Commission?

144 Q. Mr. Neumann: I object to the Master's question.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Knowing the nature of the expenditures indicated by the different accounts kept by this company, I compared them with the definition of accounts set down in the Public Service Commission classifications, uniform system of accounts, and considered that the numbers I set down against these items were the corresponding accounts.

Q. Who set the numbers down?

A. I did personally.

Q. In other words, it is your inference that the classifications are correctly designated by you by these numbers?

A. Yes.

Mr. Neumann: I renew my objection.

The Master: Don't you see, Mr. Neumann, that your objection is rather futile, because all that Mr. Teele undertakes to say is that he assumed that these accounts are properly identified.

Mr. Tobin: I think it goes further than that. They are assuming and attempting through this process of examination to show that

these are uniform system of *account* accounts as marked on this particular exhibit that is here for identification.

Mr. Neumann: And later on counsel will claim that he has proven that these books are kept in accordance with the uniform system of accounts, because of what Mr. Teele is now saying.

145 The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Mr. Tobin: We were given to understand that Mr. Teele was simply to testify to what he did in the examination of these books.

The Master: That is what he is doing.

Mr. Tobin: No, he goes further than that. He attempts to say that they are the same accounts as shown in the uniform system of accounts.

The Master: He is just telling me what he did.

Mr. Ransom: There are certain titles in the books, and there are certain titles on these tabulations. He is simply adding the classification account number which appears in the uniform system of accounts for gas corporations, which is in evidence.

The Master: He is telling us what he did.

Mr. Tobin: Exception.

Q. On Schedule 1 of Exhibit 65 for Identification, in the left hand column, you have put down the references to the folios of general ledger No. 4 in which these respective items appear, have you not?

A. Yes.

Q. And in Schedule 2 of Exhibit 65 for Identification you have put down the folio of the operating expense ledger No. 2 in which these various items appear?

A. Yes.

Q. Likewise as to Schedule No. 3, in connection with cost to distribute?

A. Yes.

Q. On Schedule 2, which is headed "Cost of production, year ended December 31, 1919", have you stated the sums of 146 money making up the various items entering into the cost of production?

A. Yes.

Q. And then you make a deduction which you call "Residuals produced, credit," and "Residuals produced, sold". Will you explain just how you ascertained the amount of that deduction, and what check and verification you made in that connection?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. What was the nature of the residuals?

Mr. Tobin: We object to the form of the question. I think he ought to be confined to asking the witness just what he did.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. Those two items appear in two separate ledger accounts on the books of the company as indicated, folios 86 and 88 of operating expense ledger No. 2. "Residuals produced, credit" is the amount credited in that account and represents the number of gallons of tar reported on the works report—

Mr. Neumann: I move to strike out the answer of the witness upon the ground that the witness is not competent to testify to that at this present time, not from this witness at least.

The Master: Objection overruled.

Mr. Neumann: Exception.

147 Mr. Tobin: If the Master please, I think this witness is going further than you indicated would be allowed, that is, in testifying as to the system of accounts and what he did in his examination. Here he is testifying to what an engineer may be called upon to testify to.

Mr. Ransom: What he found, what he checked.

Mr. Neumann: You are going further than that.

The Master: I don't think so.

Mr. Tobin: I think it is quite serious at this time.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Proceed.

A. Representing the number of gallons of tar reported by the works as having been produced and used during the month, calculated at six cents per gallon, and corresponds to the same figure which is found in the cost of production schedule, immediately above it, and as it appears on folio 84 of the operating expense ledger. In other words, the same amount appears on both sides.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. This tar is water gas tar?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. This witness has no qualifications to say whether it is water gas tar, or any other kind of tar.

148 The Master: Objection overruled.

Mr. Neumann: Exception.

A. It is so designated on the books and on the reports.

Q. Did you check these quantities of water gas tar produced and used and sold, first, produced and used, to the works report?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial both as to form and substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If the Master please, there is nothing on this schedule which refers to water gas tar; there is nothing here at all which refers to it. If you examine it you will find there is nothing.

The Master: Go ahead.

Mr. Tobin: We object to the form of the question and the substance of it.

The Master: Objection overruled.

Mr. Tobin: Exception.

Q. In other words, water gas tar is used, and the cost of production is charged at six cents per gallon?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, both as to form and as to substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Then there is deducted from the cost of production as a residual credit the quantity of boiler fuel tar or water gas tar produced.

149 Mr. Neumann: I make the same objection, that it is incompetent, irrelevant and immaterial, both as to form and substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. At the same rate, six cents per gallon?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. And the very slight quantity sold was at the same rate?

Mr. Neumann: I make the same objection both as to form and substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. It produced \$13.95. I think there was reported less than 100 gallons.

The Master: Was any sold?

The Witness: Amounting to \$13.95.

The Master: You did not give the price at which it was sold?

The Witness: I have that in my working papers, the amount they received for it; I haven't those here.

Q. Schedule 4 of Exhibit 65 for Identification relates to taxes and interest thereon. Will you describe from what sources you made up this tabulation, and from what sources you checked and verified it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception. If the Master please, I think the witness ought to be asked to testify as to how the schedule was made up, and not in just the form in which Judge Ransom asks the questions. I think it is a leading question, and we were given to understand that Mr. Teele would testify as to just what he did in connection with this examination.

Mr. Ransom: I don't know who gave you to understand any such thing.

Mr. Tobin: We did so understand.

Mr. Neumann: Yes, we did.

Mr. Ransom: From whom?

Mr. Neumann: From the Master.

Mr. Tobin: Yes.

The Master: I rule that this is all within the lines I indicated.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: Where did you get your information?

The Witness: From the checks, bills, and the ledger accounts.

Q. Is this a tabulation from the bills?

A. It is.

Q. And also checked with the ledger accounts?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. And the ledger accounts were also checked with the bills?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Just take the different items there and show how you made up the statement?

151 Q. The Master: Don't answer it that way. Were there any adjustments there at all?

The Witness: There were no adjustments. All the checks paid by the company are stated here applicable to the year 1919. Interest on unpaid taxes does not appear upon the tax bills, but it is calculated at the rate of 7 per cent per annum on the unpaid taxes, and appears upon the company's books.

Mr. Neumann: I move to strike out the answer of the witness.
The Master: Motion denied.

Mr. Neuman: Exception.

Q. Now, turning to Exhibit 64 for Identification, cost of production and distribution, year ended December 31, 1919.—

Mr. Tobin: If the Master please, this is a still more important document, and I think the witness ought to be confined to just the method by which he got these figures together, instead of going over and testifying as to what an engineer or some other officer of the company properly qualified should testify to.

The Master: Let us see what the question is first.

Q. On the first sheet of this exhibit headed "Cost of production" you set forth various items of generator coal, boiler fuel coal, gas oil, gas making labor, and the like. Take the first item, generator coal, quantity.

Mr. Tobin: If the Master please, I think the witness ought to be allowed to testify as to how he made up this particular first page instead of having Mr. Ransom lead him along as to the substance of these particulars that are in here.

152 Q. Mr. Neumann: And afterwards it will be claimed by Mr. Ransom that he proved the quantity of generator coal by allowing the witness to testify to the figures on the exhibit.

The Master: Let us get a concrete question.

Q. From what sources did you obtain, and from what sources verify the quantity of generator coal which you have shown on the exhibit?

The Master: Just tell us the sources from which you got your information.

A. The quantities are taken from the daily record of manufacture.

Q. And that is true of the other accounts of coal and fuel?

A. That is true of all the items set down, in the quantity column.

Q. Now, the column headed "Amount" shows various sums of money in connection with each of those items. From what sources did you obtain, and from what sources verify and check the amounts of money shown in this column?

Mr. Tobin: If the Master please, I object to the form of the question. I think he should ask the witness how he obtained the figures.

The Master: That is what he is doing.

Mr. Tobin: Well, he is going at it in a little more direct way.

Mr. Ransom: "Direct way" is very good.

A. They were taken from the ledger account. This particular amount of coal, \$48,000.—

153 Q. Mr. Neumann: One moment.

The Master: No, no.

Q. It is the amount of money shown in the ledger accounts?
A. Yes.

The Master: In money.

The Witness: In money.

Q. As having been expended for coal?

A. Yes.

Q. How did you get the prices per ton, per gallon, per cubic foot, etc., which appear under the unit price column?

A. By dividing the quantities shown into the dollars shown in the amount column.

Q. Thereby giving you a unit price per ton, or per gallon, according as the unit is for the particular quantity?

Mr. Neumann: I object to that and ask that the question be stricken out as a conclusion of the examining attorney.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. In the column headed "Cost per cubic foot," there are set forth various sums of money in connection with each of the items on this cost of production sheet. How did you obtain the figure in money which is there shown per thousand cubic feet?

A. By dividing the figures appearing in the amount column by the total number of cubic feet of gas made, as shown by the record of manufacture.

Q. How did you obtain the figures in pounds, gallons, cubic feet, and so on, which are shown in the next column, the material 154 per thousand cubic feet made?

A. By dividing the total quantities by the total number of cubic feet of gas made.

Q. From what source did you obtain the number of thousand cubic feet of gas used by the New York & Queens Gas Company itself, that the company used?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. From the reports in the office of the company.

Q. Which reports?

A. The monthly office reports.

Q. And you have described the course and the method of verifying the quantity sold to consumers?

A. Yes.

Q. From what source did you obtain and verify the items shown in red ink, "Decrease in stock on hand?"

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. By deducting the stock on hand December 31st, as shown by the daily record of manufacture, from the stock on hand as shown by that same record, January 1, 1919.

Mr. Ransom: Defendants may cross examine.

155 The Master: Do you want to cross examine now, or do you want to hold it?

Mr. Tobin: We want to hold it over.

The Master: I will reserve cross-examination. Don't you want to ask him about the Cost of Distribution sheet?

Q. On this Cost of Distribution sheet of Exhibit 64 for Identification, you have shown certain amounts in money. Those are taken from the sources and verified in the way in which you have already described, in connection with the revenues and expense statements?

A. Yes, they are.

Q. In the second column, or in the last column to the right, you show cost per thousand cubic feet sold. How did you obtain the amounts of money shown in that column?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. By dividing the figures in the column headed, "Amount" by the number of cubic feet of gas sold.

Mr. Tobin: If the Master please, I think they are simply introducing evidence as to what transpired, instead of the method of doing business, or as to what this man found on his examination of the accounts.

Mr. Neumann: I object to it on the further ground that apparently this computation of the witness is based on something which is not yet in evidence.

156 The Master: He is stating that all of the figures are taken from the books? Am I correct about that?

The Witness: That is right.

Mr. Neumann: He is talking about gas sold.

The Master: As taken from the books. Where did you get "Renewals and Replacements" from?

The Witness: The actual replacements that are shown on—

The Master: That appears in the books, too?

The Witness: Yes, sir, ledger folio 188.

The Master: The amount as shown in the amount column appears in the books?

The Witness: It does.

The Master: The cross-examination is reserved.

Mr. Tobin: We would like to have entered here, if the Master please, a general objection to the testimony, to the effect that the State is not bound in any way by what actually transpired, as concerns the testimony of this witness, except as to the methods in which the business of the company was carried on that this man found upon his examination. In other words we should not have introduced here as against the State evidence which should properly be given by an engineer or some other officer of the company, and be bound by it.

157 ALLEN S. MILLER, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Miller, what is your occupation?

A. I am an engineer, and the Vice-President of the Bartlett-Hayward Company of Baltimore, which company is a manufacturing and contracting company making certain automobile parts, pneumatic tools, and all of the gas manufacturing apparatus ordinarily used by gas companies, outside of running machinery.

Q. That is gas holders—

A. Gas holders, water gas generators, retorts—

Q. Generating and purifying apparatus?

A. Yes.

Q. Condensing and scrubbing apparatus?

A. Condensing and scrubbing apparatus, pipe fittings.

Q. And by-product apparatus?

A. A full line of by-product apparatus.

Q. And some general job work?

A. The company does do general jobbing work in its machine shop. It has large blacksmith shops, foundries, plate shops and machine shops.

Q. It also manufactures sugar machinery?

A. Yes, sir.

Q. Does it take contracts for gas plants complete, or for the construction of parts of plants as needed?

A. It will take contracts for almost any part of a gas plant or for complete gas plants.

Q. It erects the plants or parts of plants?

A. It manufactures a large part of all the equipment in its own establishment, and what equipment it does not manufacture

158 it buys and erects, and starts the plant.

Q. The iron and steel parts therefor it manufactures and erects?

A. Yes. That does not apply to proving machinery like engines, exhausters, etc., but cast iron work and such things it makes in its own shops.

Q. Running machinery it buys and sets up and installs?

A. Yes, sir.

Q. As a part of its installation of a given plant or unit of a plant?

A. Yes.

Q. How long have you known the Bartlett-Hayward Company to be engaged in the erection of gas plants and structures?

A. Personally since I have been in the gas business, which is thirty-two years.

Q. Since 1888?

A. Since 1888.

Q. And at that time it was engaged in the manufacture of gas plants and gas manufacturing apparatus?

A. It had been engaged for many years, yes.

Q. Before that time?

A. Yes.

Q. What academic and engineering education did you receive?

A. I was educated in the private schools of Richmond, Virginia; then I went one year to the Richmond College; afterwards, three years at Stevens Institute of Technology in Hoboken, from which I graduated in 1888 as mechanical engineer.

Q. What have been your occupations since you were graduated as an engineer?

159 Q. A. Immediately after leaving Stevens Institute I went with the United Gas Improvement Company of Philadelphia.

Q. In its engineering department?

A. As a draughtsman or cadet engineer in the construction department. The United Gas Improvement Company being an operating company, and also a constructing company in the gas business.

Q. That is, it both owned and operated gas plants of its own, and took contracts for the erection of gas plants and apparatus?

A. Yes.

Q. What did you do there?

A. There I made drawings of gas holders, gas works apparatus that is retorts, and of buildings. As far as I recall that was the principal work in that office, which lasted only four months.

Q. In August of that year what did you do?

A. I went to Omaha, Nebraska, as assistant superintendent of the gas company in that city, which company was owned by the United Gas Improvement Company.

Q. What were your duties there subject to the advice of the superintendent?

A. I had charge of the manufacture of gas, the maintenance of the plant, the new construction work, which involved a new holder and governor house, and also the laying of mains and services; and I personally kept the records of construction, and the records of the main laid.

Q. Did you build a gas holder, governor house, and so on there?

A. Yes.

160 Q. And had charge of the installation of many miles of mains?

A. Yes.

Q. Did you personally keep all the records of the main installation, including the cost data of material and labor?

A. Yes.

Q. All the labor and materials entering into the cost of making gas at that plant?

Mr. Neumann: I object to that unless counsel confines it to some particular time. It is indefinite as to time.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Did you actually personally check up the time cards and approve all bills?

Mr. Neumann: I make the same objection, that there is no limitation as to time, and no time specified.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I actually kept the time myself. It was a plant smaller than the Flushing plant. I had my office in the plant and kept the time of the men and checked up all costs, and personally approved all bills relating to the operation of the plant, and to the operation of the construction portion of the distribution system.

Mr. Neumann: I move to strike out the answer upon the ground that no time is specified.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. How long did you stay in Omaha in this capacity?

A. From August, 1888 to May, 1892.

Q. Then what did you do?

161 A. I went to Chicago as general manager of the National Gas Light & Fuel Company, which was also owned by the United Gas Improvement Company, and which had charge of the work in the West of the United Gas Improvement Company.

Q. That is, on gas plants and gas works and apparatus?

A. Yes.

Q. It built and took contracts?

A. It took contracts and erected.

Q. What did you do there?

A. There I canvassed the territory and made contracts for apparatus, and in at least one case I built a gas apparatus for one of the companies.

Q. What next? Did you then become western agent?

A. Well, during that period I closed out the National Gas Light & Fuel Company as an agency, and ran the office as western sales agent of the United Gas Improvement Company.

Q. How long were you there?

A. I was there two years.

Q. Then what did you do?

A. Then I came to New York as engineer of the East River Gas Company of Long Island City.

Q. Was that at that time affiliated with the Consolidated Gas System?

A. No; at that time it was a small plant making and distributing gas in Long Island City.

Q. Was it building a plant and tunnels?

A. At the same time it was working on a tunnel under the East River, and a plant was in course of construction.

Q. How large a plant?

A. It had a nominal capacity of six million cubic feet per day.

162 Q. That is, the company was then seeking and preparing to sell gas in the Borough of Manhattan as well?

A. Yes, then New York City.

Q. How long were you with the East River Gas Company of Long Island City?

A. There I had charge of the completion of the plant and completed it and started it up, and had entire charge of its operation. In October of that year gas was turned on in New York City. I had charge of the distribution system in New York.

The Master: The tunnel had been built?

The Witness: The tunnel was completed in October.

The Master: What tunnel is that?

The Witness: That is the Ravenswood tunnel. That was completed and gas was turned on in October, 1894.

Q. What was the capacity of the plant of the East River Company at the time you went there?

A. I do not recollect exactly, but probably about four or five hundred thousand feet a day.

Q. What was the capacity per day at the time you left there at the end of about eight years?

A. Thirty millions, nominally.

Q. And the tunnel meanwhile had been finished?

A. Yes.

Q. Did you have charge of the construction and design of the new plant?

A. The first unit had been designed, and construction was underway when I went there. I completed that. I had entire charge of that construction and completed it. The balance of the plant I designed and constructed.

163 Q. Did you have charge of the gas business in Long Island City?

A. Yes, the commercial business, entire charge, and entire charge of all the operations of the company in Long Island City, including all the manufacture of gas, and all the commercial business of selling gas in that territory.

Q. Did you have charge of the engineering end of the gas works in Manhattan?

A. I did all of the engineering in Manhattan.

Q. And that included charge of the distributing system?

A. The holder station, the mains, services, and setting of meters. That was under the engineer, the setting, removing and maintenance of meters.

Q. And the tunnel had been finished and gas turned on in the mains in New York City in 1894?

A. Yes.

Q. In 1898 was there any change in the status of the East River Gas Company with which you were identified?

A. The East River Gas Company of Long Island City was consolidated with the Equitable Gas Light Company, forming the New Amsterdam Gas Company, and I was made the engineer of the New Amsterdam Gas Company, and had charge of the operation of the Equitable works as well as the East River works at Ravenswood, as well as the whole distributing system.

Q. And commercial operations likewise?

A. Not in New York.

Q. In Long Island City?

A. In Long Island City I continued in charge of all commercial operations.

164 Q. As far as canvassing in Manhattan was concerned, or the delivery of bills, you didn't have charge of that?

A. No.

Q. But you did have charge of the manufacture of gas and of the construction work?

A. All the manufacture and all the construction, and all the engineering operations of the company in all territories.

Q. Up to and after this consolidation in 1898 into the New Amsterdam Gas Company, was the New Amsterdam Company controlled by or in any way identified with the Consolidated system at that time?

A. No, not at that time.

Q. It was a vigorously competing company in those days?

A. It was.

Q. It was the New York & East River Gas Company which owned the East River Gas Company, and consolidated with the Equitable Gas Light Company which formed the New Amsterdam Company in 1898 as a competitor of the Consolidated?

A. Yes.

Q. Now, in 1900, or thereabouts, what happened so far as the Consolidated Company acquiring any interest in the New Amsterdam Company was concerned, and what did you do then?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

165 A. The Consolidated Gas Company of New York bought control of the New Amsterdam Company, and in addition to my duties as engineer of the New Amsterdam Gas Com-

pany I was made constructing engineer of the Consolidated Gas Company.

Mr. Tobin: If the Master please, I move that that answer be stricken out. I think this witness ought to be asked how he was employed at that particular time, and not put in transactions between gas companies, consolidations and mergers, and a lot of other things here. It is all right to ask him what it was he did, and what position he had, but to enter on the record all these consolidations and changes, I think is not proper.

The Master: I will let the answer stand. I think perhaps technically it is objectionable.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Q. In 1900, then, you were constructing engineer of the Consolidated Gas Company, and also engineer of the New Amsterdam Gas Company?

A. Yes, sir.

Q. After that did you build any extensions to the New Amsterdam plant?

A. Yes. The New Amsterdam plant was increased by two extensions after the first unit. One of the extensions I built shortly after 1898, and the second extension, bringing it up to a capacity of thirty million, around 1901.

Q. About doubling its capacity?

A. The second extension doubled the capacity, yes.

Q. And did you build the two five million cubic feet capacity holders of the Consolidated Company at 111th Street?

166 A. Yes, I built those holders, and put up some apparatus, boilers and other things, at 99th Street.

Q. Valve and governor house?

A. Yes, governor house at 11th Street.

Q. Additional gas mains in the East River Tunnel?

A. Yes, and put in a lot of coal gas apparatus in the Central Union plant.

Q. New condensers at 21st Street?

A. Yes.

Q. Generating apparatus at 44th Street?

A. Generating apparatus and condenser apparatus and scrubbing apparatus.

The Master: For what purpose are you qualifying Mr. Miller? What do you want to prove by him after you have qualified him?

Mr. Ransom: Present value of property.

The Master: Present value? On what basis, cost to replace, or what?

Mr. Ransom: Cost to replace.

The Master: I will stop the examination as to qualification at this point. I will let you take it up again if I hear counsel questioning it later on.

Mr. Tobin: We except to that, if your Honor please. We want to ask some questions of this witness.

The Master: You are not satisfied yet?

Mr. Tobin: No, sir.

The Master: Go ahead, then.

Q. In 1902, you did what?

A. I went to Baltimore as Vice-President and General Manager of the Consolidated Gas Company of Baltimore.

167 Q. Has the Consolidated Gas Company of Baltimore any connection with the Consolidated Gas Company of New York?

A. None whatever. There I built an entirely new plant, and re-arranged the distributing system, added many miles of mains, and secured many new customers. At a later date—

Mr. Neumann: I object to that unless the witness fixes the time. Throughout his entire testimony the time is very vaguely fixed.

Mr. Ransom: It is very definitely fixed.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Well, three or four years later, I would not say the exact date, the Consolidated Gas Company was consolidated with—

Mr. Neumann: I object to that upon the ground that it has nothing to do with the qualifications of the witness.

The Master: Yes, I will sustain the objection.

Q. Was there some new company in Baltimore of which you became an officer, and for which you undertook certain duties?

Mr. Neumann: I object to that unless the time is fixed.

The Master: He says three or four years.

A. About 1907 I became Vice-President and General Manager of the Consolidated Gas, Electric Light & Power Company of Baltimore, which supplied all the gas in Baltimore and suburbs, and practically all of the electricity except that used in connection with the operation of the street railways.

Q. Did you build a new electric plant?

168 A. I built a new electric generating station to supply all the company's requirements, and completely rebuilt the electric distributing system which had been supplied from several small plants, and I re-arranged it so as to supply everything from one central station.

Q. In 1906 while you were still connected with the Baltimore Company did you become connected with any other gas corporation?

A. Yes, I was made President of the Hyattsville Gas & Electric Company, and I built a complete plant and distributing system for the town of Hyattsville.

Q. Hyattsville is near the edge of the District of Columbia?

A. It is in Maryland alongside of the District of Columbia.

Q. You are still President of that company?

A. Yes, and own half an interest in it.

Q. In 1909 what did you do?

A. In 1909 I went to St. Louis as Vice-President and General

Manager of the Union Electric Light & Power Company, and a short while afterwards, within the next six months, was made president of the company.

Q. In 1911, and for four years thereafter, were you a consulting engineer in the firm of Humphries & Miller?

A. I was Vice-President, and a member of the firm of Humphries & Miller, consulting engineers. I am still Vice-President.

Q. When did you become Vice-President of the Bartlett-Hayward Company, in 1915?

A. In August, 1915, I went to Baltimore as Vice-President of the Bartlett-Hayward Company, and also took an interest in the company.

169 Mr. Neumann: I move to strike out the words "took an interest in the company."

The Master: Motion denied.

Mr. Neumann: Exception.

Q. You have been with the Bartlett-Hayward Company since in the capacity you have described, with the exception of what time?

A. With the exception of a period from April, 1918, to December, 1918, I have been with the Bartlett-Hayward Company as Vice-President and Director. From April to December, 1918, I was connected with the Engineering Division of the Ordnance Department in charge of the design of cannon ammunition.

Q. Of what engineering or scientific societies are you an officer or member?

A. I am Fellow of the American Institute of Electrical Engineers; member of the American Institute of Consulting Engineers; American Society of Mechanical Engineers; American Gas Association; The Illuminating Engineering Society; the Society of Gas Lighting.

Q. During your vice-presidency of the Bartlett-Hayward Company has the Bartlett-Hayward Company from time to time done work at the plant of the New York & Queens Gas Company, and the Consolidated Gas Company, and other companies of the Consolidated System?

A. Yes.

Q. And you have been in touch with this work and in charge of portions of it from time to time?

A. Yes.

Q. In connection with that work, from 1900 down to date, and for a number of years prior to 1900, have you purchased and sold materials, and employed labor used in the construction and 170 operation of manufacturing and distributing plants for gas?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. Counsel stated that he is only qualifying this witness for the purpose of stating present day prices.

Mr. Ransom: I may ask him some other questions. I am qualifying him broadly.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Have you been and are you now familiar with the market price of such materials, and the rates of pay of such labor, from 1900 down to the present time?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Mr. Miller, during the year 1918 and 1919 were you employed by the New York & Queens Gas Company to undertake an inventory and appraisal of its buildings, manufacturing and holding stations, apparatus, distributing system and other properties?

A. Yes, sir.

Q. On or about what date, if you can give the approximate date—about what time?

A. I think it was in June, 1918; I am not sure.

Q. When did you begin that work, about what time?

A. I did a very small amount of work at that time, made a general examination of the plant, but did not begin it very actively 171 until after I left the service in December, 1918. Then I took it up quite actively.

Q. When did you finish your inventory and appraisal of the property of this company?

A. Within six or eight weeks.

Q. Did you devote much of your own time to it?

A. Yes, a considerable amount of time.

Q. Did you personally examine all the buildings, holders, and apparatus of the New York & Queens Gas Company?

A. Yes.

Q. What assistants did you have in this work?

A. I had some of my own men from Baltimore, and had some special men that I brought in to help me in this connection.

Q. That is, they were all your employees?

A. Oh yes.

Q. During what period of time did these assistants work with you and for you on this inventory and appraisal?

A. The work altogether went over a period of about 15 months.

Q. Did all of these men work with you and under your immediate supervision and personal direction?

A. Yes.

Q. Did you give them instructions from time to time as to what you wanted them to do and how?

A. Yes.

Q. Did you personally observe the work that they were doing from time to time, and the results of it?

A. Yes.

Q. Did you personally go over all their work?

A. I did, and checked all the figures.

172 Q. You went over the details of their inventory and of the appraisal?

A. Yes.

The Master: This inventory is as of what date?

The Witness: As of January 1, 1920.

Q. And you made such changes in the work of your assistants, if any, as seemed necessary in order to make anything found by them conform to your own judgment?

A. Yes.

Q. Now, as a result of the work which you have described did you prepare a document which I now show you, entitled "Inventory of the New York & Queens Gas Company as of January 1, 1920, Summary of Costs?"

The Master: Summary of cost?

Mr. Ransom: Well, summary of value.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and upon the further ground that the statement of counsel is very vague and indefinite as to what the inventory is.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: Did you prepare this statement?

The Witness: Yes.

Q. The first two pages show an index of the various pages of that inventory and appraisal on which particular properties are dealt with, for example, old generator house, pages 1 to 4, and so on?

A. Yes.

173 Mr. Tobin: If the Master please, we are not ready to accept that this witness has been qualified to fix the costs.

The Master: We haven't got to that yet.

Mr. Tobin: He is coming to a schedule here.

Q. Next, you have made up and incorporated in this document a summary statement, which you call, "Summary of cost to reproduce the plant of the New York & Queens Gas Company, January 1, 1920."

A. Yes.

Q. Following the different subdivisions of this summary I find various numbers, in some instances numbers and letters in parenthesis, for example, ("Land"), ("G. 110"), "Street Mains (231)," etc. What do these numbers and letters in parenthesis mean?

A. They are the letters of the account in the Public Service Commission's uniform system of accounts.

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and I move to strike out the witness' answer. The witness is not yet qualified.

The Master: Objection overruled and motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception. If the Master please, there has been no foundation laid to indicate that these are the same accounts as might be called for in the uniform system of accounts. There is nothing here to indicate that.

The Master: My ruling will stand.

174 Mr. Tobin: Exception.

Mr. Neumann: That objection, of course, may be put in before the witness' answer? It came too quick?

The Master: Yes.

Q. Turning to the inventory and appraisal of the physical property, have you set forth with respect to each building, structure, etc., the details of the computation by which you have ascertained and calculated the cost to reproduce it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, nothing shown as to the time or date of production cost.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. For example, take page 1 of the pages as they have been numbered by the numbering machine, in relation to generator house No. 1, in the left hand column you have for convenience assigned an item number—to the various details entering into the cost to reproduce this generator house?

Mr. Neumann: I object to that on the same grounds as before.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. That is 1, 1A, and so on, excavation being 1, and shallow earth being 1A, and back fill being 1E?

A. Yes.

Q. That is for the purpose of convenient reference?

A. That is for my own convenience.

175 Q. In the third column you have shown the quantity of each kind of material and labor entering into the particular item of property?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The amount shows the material with the labor added to it. In other words, they are not shown separately.

Q. The third column is quantity?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. That is correct, is it?

A. Yes.

Q. And in the next column you have shown the unit in which such item is measured, whether in cubic yards or cubic feet, or whatever may be the unit standard of measurement?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. Is that correct?

A. Yes.

Q. And in the fifth column you have shown the unit prices which you have applied to such unit quantities?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Do the unit prices shown in the fifth column represent, 176 in your judgment, the fair and reasonable and necessary cost as of January 1, 1920, of the units of materials, labor, etc., shown in this inventory and appraisal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness is not properly qualified.

Mr. Tobin: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes, on a sub-contract basis.

Mr. Neumann: I move to strike out the witness' answer, and the question, in view of the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. With respect to the distribution system, street mains, etc., will you describe how you ascertained the quantities and their reproduction cost as of January 1, 1920?

Mr. Neumann: I make the same objection.

A. I took the company's records as far back as they went, and took from them the quantities of mains that were laid from year to year, and that left a balance which presumably might have been there before the records began. I then took a map and entered on it all the mains as shown by the record. I then entered on that map, in different colored ink, the mains that should have been there according to another old map. Then I went to the company's files and took out records of repairs and services, and such work and checked this map that I had made on the old map, checked

that part to find out whether the reports of the men who did work
on services, or work on repairs, or work on extensions, agreed
177 with this map. Then there were still a few gaps, and I had
the ground dug at those places to identify the pipes that
could not be identified either from the records as having been laid,
or from the records as having been worked on since they were laid,
by actual inspection of the pipe in the ground.

Mr. Neumann: I move to strike out the answer on the ground
that it is based on assumptions and presumptions.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Except to the extent to which you have described, you of
course had no way of physically looking at these mains under the
surface of the ground?

Mr. Neumann: I object to that as incompetent, irrelevant and
immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I did not look at any except in just a few places that did not
have a record establishing their existence.

Mr. Neumann: I move to strike out the witness' answer, and the
question in view of the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. When a new service is installed and the ground is dug up for
that purpose, the main is exposed for the purpose of connecting new
service, and is a record in regular course made with respect to the
main and the size of the main, to which the service is attached?

Mr. Neumann: I object to that as incompetent, irrelevant
178 and immaterial, improper as to form and substance, and also
not within the province of this witness to testify.

The Master: I take the question to mean that he found records
which pretended to show that.

Mr. Ransom: Yes.

Mr. Neumann: I make the same objection to that question.

Mr. Tobin: We would like to raise a general objection and excep-
tion right here, that the State should not be bound by quantities or
kinds of property owned by the company, that these figures that
are being submitted here are simply based upon data furnished by
the company. In other words, we are not going to accept this man
as stating that the company owned these particular properties. He
simply made a valuation, and he should be asked to explain this
valuation and nothing further. In other words, there should not
be brought into the record something that is going to be testified
to by an officer or engineer of the company.

The Master: I think there ought to be some evidence as to the
extent of these mains, and as to the accuracy—

Mr. Tobin: There should be something before this man is called upon to testify as to what they are worth.

Mr. Ransom: You mean as to the accuracy of the main records?

The Master: Yes. Let him say for the time being that he relied upon them.

179 Mr. Tobin: We object to that line of examination if you Honor please. We do not think it is fair to the State. To begin with, we have no copy of this book.

Mr. Ransom: It was sent to you weeks ago.

Mr. Neumann: By weeks ago you mean about a week ago, don't you? You have my letter acknowledging receipt of it. Bring out the letter.

Mr. Ransom: I can prove that this was sent to you weeks ago, not one or two weeks ago, but weeks ago.

The Master: Next question.

Mr. Tobin: There is another part to it, too. This is based upon an inventory which Mr. Ransom says he furnished to the State and the other defendants, but it is not complete, that is, there are certain items which go to make up that inventory which are not complete, and which are before you for further direction.

The Master: We will take that up as soon as we get through with Mr. Miller.

Mr. Tobin: Here is this witness testifying to this inventory, and we have no way of dealing with it fairly. They are simply introducing evidence which should be introduced by proper officials or engineers of the company.

Q. From these different sources which you mention, Mr. Miller, you ascertained the quantities and sizes and lengths of mains which quantities you made the basis of your appraisal?

180 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, both as to substance and form.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Now, with respect to services, meters, gas appliances, and the like, will you describe how you ascertained their quantity and the cost to reproduce them as of January 1, 1920?

Mr. Neumann: I make the same objection to that, both as to form and substance.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The services I took from the record of services laid, going back to the earliest record I could find in the company's possession, which shows each month the service laid, giving the location and length of service and the size of service. That record started with an original balance, which was small, I do not recollect the exact number, but there weren't very many services at the time this record was opened. This record shows each one that has been laid since. In

order to check up the probability of this being correct at the start I looked over the reports showing the amount of business that the company did at this period, in 1904, the number of meters it had, and checked that against the number of services that were shown by the record, and satisfied myself that the number was reasonable in the opening of the book. For the meters, I counted from the consumer's ledger and counted the number in stock.

Mr. Neumann: I move to strike out the witness' answer upon the ground, among others, that it is based upon assumptions.

The Master: Motion denied.

Mr. Neumann: Exception.

181 Mr. Tobin: I move you at this time that we suspend until there is some testimony here as to the extent of property owned by the company. This man is simply a valuation engineer, he has come in here to make a valuation of the property, and they are asking him these things. I think we should have an estimate of what the company owns by an officer of the company before we go any further. I think the State should be protected to that extent.

The Master: The State will be protected. Motion denied.

Mr. Tobin: Exception.

The Master: I am not going to take Mr. Miller's value until I get more proof of what actual property they have on hand.

Mr. Tobin: It occurs to me that if we got that in first we might proceed in a more orderly way.

A. The appliances were taken from the company's inventory, furnished by the company.

Mr. Neumann: I move to strike out the balance of the witness' answer upon the same grounds as before stated.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: I object further that his answer is not based upon any facts which are before the Master. It is based purely upon assumptions of his own.

The Master: Objection overruled.

Mr. Tobin: Exception.

Q. Did you make any check with respect to the accuracy of these meter records, so far as the meters on the District were concerned?

182 The Master: I thought he answered that?

Mr. Ransom: He said he counted some of the consumers' ledgers.

The Master: He figured a meter for each consumer.

A. I counted them right from the ledgers, and checked them on the meter readers' books.

Q. That is, you took the meter readers' books, and also the consumers' ledgers from which bills were being rendered and paid?

A. Yes, the meter readers' books show the reading of the meter each month.

Q. Now, with respect to the item, "Works office and dwelling," you did not undertake to make a valuation or appraisal of this works office and dwelling, those two buildings?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. If he did not undertake to make an appraisal what is the purpose of it?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No.

Q. You obtained that figure for that building from what source?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. From the local builder who has testified here.

Q. You mean Mr. O'Connor?

A. Mr. O'Connor.

Mr. Neumann: I move to strike out the answer on the ground that it is based on hearsay.

183 The Master: Motion denied.

Mr. Neumann: Exception.

Q. In other words you have included and incorporated in your inventory and appraisal, in so far as it relates to this works office and dwelling the figure testified to by Mr. O'Connor, and incorporated in the estimate or letter which was marked for identification at the last hearing?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, based on something that is not in evidence in this case.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. You did not undertake to make a valuation or appraisal of the land owned and used by the company as of January 1, 1920, did you?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. No.

Q. From what source did you obtain the figures given by you in your summary table for land?

Mr. Neumann: I make the same objection.

Mr. Tobin: If your Honor please, there is no testimony whatever with reference to the value of land.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. From the appraisal of Mr. Halloran.

184 Q. John J. Halloran?

A. Yes.

Mr. Neumann: I move to strike out the answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. In so far as this inventory and appraisal relates to land, it relates only to the land occupied by the manufacturing plant, holders and appurtenant structures?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness so to state.

The Master: I will take the witness' statement. Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. That is, you have not undertaken to show in this inventory and appraisal either the land rented by the company for office use, or the building thereon occupied for office purposes but not owned by the company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and assuming a state of fact which have not yet been proven in this case.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. No.

Q. In the summary table which follows the index, in addition to the inventory, the summary of the inventory and appraisal of the tangible property, there appear also and you have set forth 185 figures embodying certain items commonly referred to as undistributed structural costs. Is that correct?

Mr. Neumann: I move to strike out from the question, and object to it, the word "commonly."

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Neumann: Now I object to the question as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. On the pages following the summary statement have you shown a series of notes or comments by you concerning the elements entering into each of these items of undistributed structural costs, and the methods followed by you in computing them?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Your objection is well founded, except that I think it will save time to take the witness' statement in this form.

Mr. Ransom: I am offering this only as a compact form of his testimony.

The Master: I think we all found in the Consolidated case that when we had a witness like Mr. Miller on the stand, who had a speech to make, that it was quicker to take his speech as he had prepared it than to ask him questions and bring out the speech by question and answer. The net result of an examination of an 186 hour or two will be that this witness will testify to the matters stated in these pages from two down to the question of working capital, which this question does not comprehend. If your objection is pressed—

Mr. Tobin: There is another point about it. He is called upon or will be called upon to give evidence here as to values, and also an indication of the condition of this property, which has not been proven.

The Master: I know that. Don't let us get away from the issue. He has given some figures, says Judge Ransom, on the basis of cost of construction not included in the particular items already covered. Now, he has stated his reasons in these pages, and has given the theory on which he has figured this, and how he figured it. Now, Judge Ransom could cover that in one of two ways, he could do it in the way of getting the testimony en bloc, or he could ask the questions, "Are there certain expenditures incident to the construction of a gas plant that have to be made," and so on, and the witness will say, "Yes," and then he will say, "Tell us some of them," and then he will enumerate the seven elements. Then he will say, "Tell us about the first one," and he will go on and make a whole speech. The only question now is whether you are pressing your objection to the method of getting the witness' statement in the record.

Mr. Tobin: The point I make is this: With the previous witness they were not satisfied to have Mr. Teele testify as to his 187 figures, but he also endeavored to have him testify as to just what the expenses consisted of. Now he is endeavoring to do the same thing here, to indicate the extent of this property, and also the condition of the property. We object to that and say it is not fair at this time, because there is no evidence here before you as to the extent of property owned by the company or the condition of the property. Of course you protected us to a certain extent as to the expenditures, because you only allowed those in indicated by vouchers offered in evidence, but Judge Ransom is going further with this witness and is trying to show the condition of the property and the extent of the property.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: I don't think the witness has answered that question. You have set forth in these pages following the summary the basis on which you made these computations?

The Witness: Yes.

The Master: And if you were asked particular questions relating to the particular items would your answers be as set forth in these pages?

The Witness: Yes.

The Master: In other words, are the statements made in these pages now made by you under oath, without repeating them all?

The Witness: Yes.

The Master: So that you are swearing to it?

188 The Witness: Yes.

Mr. Neumann: My objection goes, of course, to all the Master's questions.

The Master: I am asking him in the same manner and to the same extent as I would ask if particular questions were asked to bring out these particular answers.

Q. If interrogated by me regarding each of these items of undistributed structural costs would you testify regarding each such item to the substantial effect shown in the corresponding note annexed to your summary statement?

Mr. Neumann: That is already covered by the Master's questions, and our objection and exception.

The Master: Then it will not do any harm to answer it again.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: I object to the form of the question.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. Yes.

Mr. Tobin: We ask that he testify to each of the items.

The Master: I will not require it now.

Mr. Tobin: Exception.

Q. The same is true with respect to your note in connection with working capital?

Mr. Neumann: I make the same objection, and also that it deprives the defendants of the opportunity to object specifically to any particular question that might be asked.

189 The Master: I will reserve to you the right to move to strike out any statement contained in any of these pages as if you had made objection to the question.

Mr. Neumann: That does not protect us. Here is a witness who is attempting to make some statements on a supposed inventory with reference to working capital. There is not a scintilla of evidence in this record to indicate that he is properly qualified to testify as to the question of working capital.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Mr. Tobin: We take a general exception.

Q. Since these notes on certain of these items were originally made up some weeks ago, and at that time furnished to the defendants, have you at my request further amplified your comments on three items, namely, engineering superintendence and general production expense and profit, administrative, and legal and miscellaneous general expense, and interest during construction?

Mr. Neumann: I move to strike out from the question the words "furnished to these defendants several weeks ago." "Several weeks ago" is what I move to strike out.

The Master: Motion denied.

Mr. Neumann: Exception. Now, I object to the question as incompetent, irrelevant and immaterial, and further upon the ground that what counsel is endeavoring to do is either to impeach or vary or alter the testimony of the witness as given heretofore.

The Master: Objection overruled.

190 Mr. Neumann: Exception.

The Master: I am frank to say in this connection, and in connection with this inventory, that I do not believe the Court ever intended by any statement made in any case to require the consumers of gas to pay a price based upon a theoretical or opinion statement as to the cost of replacing the plant today. Now, it may be that I have got to value the plant as of this time under some of the language of the cases, but having in mind an expression in the decision or opinion of the Supreme Court in the prior Consolidated case, I do not believe the Court ever intended that the consumers should pay for gas based upon the present, and to some extent, in one point of view, an abnormally high price of reproducing this kind of property. I am going to take all this evidence.

Mr. Neumann: Your Honor means a return based on that valuation?

The Master: I say a return based on that. It may well be that I have got to make some finding as to present cost of replacing or reproducing, and therefore I am going to take this proof, but I am frank to say I do not believe the Court ever intended to impose any such condition on the consumer.

Mr. Tobin: We object further to this question in that we do not believe it proper that the brief of the other side should be handed in on certain questions which will come before you for exact evidence,

a brief on this particular matter that seems to be raised by Judge Ransom, and which he now attempts to append to the inventory previously given to the defendants.

191 Mr. Ransom: It is only a slight elaboration.

Mr. Tobin: You are attempting to make it the testimony of the witness. We object to the introduction of it.

The Master: Objection overruled.

Mr. Tobin: Exception.

Mr. Ransom: Subject to the offering of more detailed supporting proof with respect to the matter of street mains, meters and appliances, I offer this inventory in evidence.

The Master: Mark it for identification first.

Paper marked Complainant's Exhibit 66 for Identification.

The Master: You had better hold the offer of that exhibit 66 for Identification in evidence back for a while.

Mr. Neumann: How about the corrections?

The Master: I will take the amplifications.

Mr. Ransom: The amplifications are in the amplified form.

Mr. Neumann: We object to it.

Mr. Ransom: Page 7, engineering superintendence and general production expense and profit; page 8, administrative, legal and miscellaneous general expense; page 10, interest during construction.

The Master: Those pages are new since you gave this the other side?

Mr. Ransom: Yes.

192 The Master: Now, give these three pages to the other side. I have asked the counsel to hold back the offer of this document in evidence, because I would like to have more supporting evidence before I take it.

Mr. Ransom: That is all with Colonel Miller at this time. The defendants may cross examine.

The Master: You may reserve your cross examination.

Mr. Ransom: Perhaps I might say this: What is missing in this inventory, Exhibit 66 for Identification, that you gentlemen want, following the last hearing I have had under preparation—although I do not believe it is called for by the order of Judge Mayer, I am very clear that it is not, I am going to have made up, and am having made up, and it is practically complete, a statement showing the details of the investment of this company in property and assets used in its gas business. That will be completed within two or three days, certainly early next week, and I then will furnish it, although I do not regard it as called for by Judge Mayer's order, and it is not a part of the proof which I contemplate offering in the complainant's case.

Mr. Neumann: What about the provision of the order which required you to furnish us by April 29th with the age of your various properties?

Mr. Ransom: That is what I am referring to. That is being prepared and will be furnished.

Mr. Neumann: What about the original costs?

193 Mr. Ransom: If you had listened to the statement which I have just made you would have heard it. There are circumstances under which it may be impossible to obtain original costs.

The Master: Then you are going to give me values based upon what a manufacturing and distributing system of this kind ordinarily cost in the years prior to the war, and that it is all it is worth to the consumer.

WILLIAM RAYNOR, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside?

A. 358 Sumner Avenue, Brooklyn.

Q. What is your connection with the New York & Queens Gas Company?

A. Secretary.

Q. Do you devote all of your time to the business of that company?

A. Yes, sir.

Q. Where is your office?

A. 88 Main Street, Flushing.

Q. That is the business office of the company?

A. Yes.

Q. In the business district of Flushing?

A. Yes, sir.

Q. What are your general duties as secretary?

A. The general supervision of the office.

194 Q. The books of account?

A. The books of account.

Q. You have charge of the work of the indexers and their records?

A. The indexers, collectors, bookkeepers and other clerks.

Q. What business were you engaged in just prior to your going with the New York & Queens Gas Company?

A. I was with the New York & Queens Electric Light & Power Company for a year.

Q. In what department?

A. In the accounting department.

Q. That is, from August, 1912, to the same month in 1913?

A. 1912 to 1913.

Q. Since August, 1913, you have been with this complainant company?

A. Yes.

Q. What business were you in prior to your entering into the service of the accounting department of the New York & Queens Electric Light & Power Company?

A. I was in the accounting department of a real estate company.

Q. You are an accountant?

A. Yes.

Q. For how many years have you had experience with books of account?

A. About fourteen.

Q. Steadily?

A. Steadily.

Q. You had a business college course in accountancy?

A. Yes.

195 Q. Or bookkeeping?

A. Several years ago.

Q. You are not a certified public accountant?

A. No, I am not.

Q. Did you work and study under a certified public accountant in the real estate business?

A. I did that, yes.

Q. Who is that?

A. H. C. Bentley.

The Master: He is a man who has written some books on accountancy, is he not?

The Witness: Yes.

Q. Have you immediate charge of keeping of the books of account and other records of the company?

A. Yes.

Q. You have a bookkeeper who makes the entries under your direction?

A. Yes, sir.

Q. When did you become secretary?

A. In January, 1920.

Q. And before that you were assistant secretary?

A. Assistant secretary from October, 1918.

Q. And before that you were head bookkeeper?

A. Chief clerk and general bookkeeper.

The Master: These books during 1919 have been under your direct supervision, have they?

The Witness: Yes, sir.

Q. You are in daily and continuous touch with the accounting system and records of the company?

A. Yes, sir.

196 Q. Are you familiar with the uniform system of accounts prescribed by the Public Service Commission for gas corporations?

A. Yes, sir.

Mr. Neumann: One moment. Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Is the classification of revenues and expenses employed by you in your books of account that set forth in the uniform system of accounts for gas corporations?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial, this witness not being properly qualified to prove that fact.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes, with the exceptions of the amortization account—

The Master: And the automobile account?

The Witness: And the automobile account, where we have renewals and replacements.

Mr. Neumann: Now I move to strike out the witness' answer upon the ground that his answer clearly indicates—

The Master: I will deny your motion.

Mr. Neumann: Exception.

Q. You keep an account called renewals and replacements?

A. Yes, sir.

Q. And report that to the Commission in your annual report, do you?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial. According to the witness' own testimony he does not keep his books in accordance with the uniform system of accounts.

A. We do.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Ransom: He has not said that.

Q. What do you charge to this account of renewals and replacements?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial; the uniform system of account shows what should be placed in that account.

The Master: Overruled.

Mr. Neumann: Exception.

A. Three cents per thousand cubic feet sold.

By the Master:

Q. What is that based on? How do you get that figure?

A. Well, that is the figure which was handed down to me by the officers; that is through the action of the Board of Directors.

Q. Have you ever figured what the actual cost of renewals and replacements is?

A. I have not figured out the actual cost, no.

Q. You have never done that?

A. No.

Mr. Tobin: If your Honor please, I think his answers there should be stricken out as to the amount arrived at, because it is simply a direction—

The Master: No, I am going to let it stand that he charges to that account three cents.

198 Mr. Tobin: Under direction of somebody else.

The Master: But my question would indicate I would like to have a little more light on it by actual figures.

Q. You charge against that account losses on property withdrawn from service?

Mr. Tobin: We object to that.

Mr. Neumann: We object to that on the ground it is incompetent, irrelevant and immaterial, not according to the uniform system of accounts.

The Master: Overruled.

Mr. Tobin: I do not think it is fair to accept an arbitrary figure in the record without some basis for it.

The Master: I am not going to accept it; I am going to let the witness state how he runs his books. He says he charges three cents, against which I assume he charges losses.

Mr. Tobin: Well, Judge Ransom's questions are bad in form.

The Master: That is not important so long as we get the facts.

Q. Do you charge losses due to retirements against that?

Mr. Neumann: My objection runs to the Master's questions, of course, also.

The Master: Yes. Overruled.

Mr. Neumann: Exception.

A. Yes, we charge losses in withdrawals against the renewals and replacements reserve account.

By the Master:

Q. How does that work; does it leave a surplus or does it leave a deficit, or did it in 1919?

199 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Tobin: We object to that.

A. It left a credit balance.

Q. A credit?

A. Yes.

Q. So your actual renewals and replacements were less than three cents?

A. A little less than three cents.

Mr. Neumann: We object to that.

The Master: Check up your records before you come back and tell me just what it was.

By Mr. Ransom:

Q. Do you have occasion in the course of your duties to test and observe the accuracy of your books of account and records?

A. Yes, sir.

Q. Do you test by trial balance at the end of each month?

A. Yes, sir.

Q. And many of the details entering into the books of account come immediately under your supervision and observation?

A. Yes, sir.

By the Master:

Q. You make entries in these books yourself?

A. Not now.

Q. You have made them, though?

A. I have made them previous to May, 1919.

Q. There are entries in these books marked for identification in your handwriting?

A. Some of them, yes.

Q. Were those entries right when you made them?

A. Yes.

Q. And correctly made?

200 A. Yes.

Mr. Neumann: If the Master please, I object to that on the ground it is a conclusion. The witness should state what he does.

The Master: Lots of facts testified to are conclusions. Objection overruled.

Mr. Neumann: I move to strike out the witness' answer.

The Master: I will let you cross-examine when the time comes to show that he is wrong about it. You ask a man if he is the owner of a house, that is a conclusion. You may show he does not know what he is talking about, but he thinks he does.

Mr. Neumann: But you would not prove he owns the house that way.

The Master: Yes, I would. You ask me if I own the land on the corner of Lyman Avenue and Seaman Avenue, and I say I do. I think I do, anyhow.

Mr. Neumann: What court would that be competent in?

The Master: Any court. I have been through it a hundred times: Query, Are you the owner of this desk or piece of property? Answer, Yes. It is a fact.

By Mr. Ransom:

Q. Up to what time did you personally make entries in these books of account?

A. Up to May 1, 1919.

Q. That is, you made none during the remainder of 1919?

A. No.

By the Master:

Q. Are you sure you made none at all?

A. I am quite sure I made none.

201 Q. Well, if you made any did you make them correctly from the information at hand?

Mr. Neumann: Now, then, I object to that.

The Master: That is overruled.

Q. In other words, did you write down the correct figures?

A. Yes, sir.

Mr. Neumann: The correct figures from what?

The Master: From whatever source it was, that we are getting to.

Q. If you were entering an item from a voucher you correctly entered it?

A. Yes, sir.

Q. You took the figures just as you found it?

A. Yes, sir.

Q. Your computations were correct?

A. Yes, sir.

Q. Whatever you made?

A. Yes, sir.

By Mr. Ransom:

Q. Are you prepared to say the books of account and records correctly reflect the transactions of the company?

A. They do.

Q. Are they correctly kept?

A. Yes, sir.

Q. Does the company keep more than one set of books, for example, for 1919; are there any other general books of account than those which have been produced and marked for identification?

Mr. Neumann: One moment. Objected to as incompetent, irrelevant and immaterial, both as to form and substance.

202 Q. For instance, operating expense ledger, is that the only operating expense ledger that you have for that period?

A. That is the only one.

Q. The same as the other one?

The Master: That is Exhibit 54 for Identification, Exhibit 52 for Identification, Exhibit 56 for Identification, Exhibit 55 for Identification and Exhibit 53 for Identification?

The Witness: They are the only books.

Q. How long have you had a bookkeeper keeping these books of account?

A. Since the first part of May, 1919.

Q. That is the time you stopped doing it?

A. Yes.

Q. Who was that bookkeeper?

A. William J. Foy.

By the Master:

Q. Miss Mold made some entries in these books, too?

A. That is before he got in. That is before he went with us.

Q. And a Mrs. Townsend?

A. She made some, possibly, in the ledgers.

By Mr. Ransom:

Q. What is her position there?

A. She is bookkeeper in the commercial department.

Q. She works under your direction?

A. Yes.

Q. And part of the time Miss Mold of your staff was working she worked under your direction?

A. Yes, sir.

203 Q. Miss Mold is still in the employ of the company?

A. Yes.

Q. And Mrs. Townsend?

A. Yes.

Q. And Mr. Foy?

A. Yes.

Q. And did any one else to your knowledge work on any of the 1919 books?

A. No one else.

Q. During the six months prior to May, 1919, you made most the entries, but had some assistance on them?

A. Yes.

Q. For example, on the journal you had an assistant?

A. That is right.

Q. Prior to October, 1918, did you keep the books of account alone; did you do practically all the work on them?

A. I did practically all the work on them.

Q. And to your knowledge they were correctly kept during the time?

A. Yes, sir.

Q. And correctly reflected the transactions of the company?

A. Yes, sir.

Mr. Neumann: Objected to.

Mr. Tobin: We object.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and should be confined to what this witness did himself. He cannot testify to whether other witnesses kept the books correctly.

The Master: Overruled.

Mr. Neumann: Exception.

204 Q. You correctly made the entries which appear therein in your handwriting in those earlier years?

A. Yes, sir.

Mr. Ransom: That is all.

The Master: All right, we will reserve this cross-examination, too.

Mr. Ransom: I have no objection to its being reserved today, but I think the defendants ought to understand that the time is close at hand when they must be prepared to—

The Master: I tell you what I think, this case is going to be a pretty short case, is it not?

Mr. Ransom: I think so.

The Master: Then get in all your direct proof and I will make them go ahead and finish their cross.

Mr. Ransom: I will do that as far as I can, and I think I probably can. I would not wish you to hold me strictly to that rule, because some things may come up on cross-examination that I will have to deal with later on direct.

The Master: But what I mean is, get all your records here and your proof in, and let the defendants look at it and go ahead with cross-examination.

Adjourned to Wednesday, May 5, 1920, at 2 P. M.

Last Complainant's Exhibit No. 66.

205 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 5, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh and Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

Mr. Hyatt: May it please your Honor, will you kindly have noted my appearance here in behalf of the District Attorney, representing the Corporation Counsel's office. Mr. Hyatt—Judson Hyatt. Do you wish any further evidence of that?

Mr. Ransom: There has been no substitution, and no notification from the District Attorney of Queens.

The Master: I do not understand Mr. Hyatt is the attorney.

Mr. Hyatt: I am not personally the attorney, but I have been asked to represent the Corporation Counsel in this matter.

The Master: Do you represent the District Attorney of Queens County as his counsel today?

206 Mr. Hyatt: No, I am asked to appear here by Mr. O'Brien.

The District Attorney of Queens has asked the Corporation Counsel to appear in his behalf in this proceeding.

Mr. Ransom: Where is the request? Is it in writing?

Mr. Hyatt: I did not understand that was to be presented, your Honor.

Mr. Chambers: How is counsel on the other side interested in this at all?

The Master: I am not interested in that. Do you appear here as counsel, Mr. Hyatt?

Mr. Hyatt: Yes.

The Master: For the District Attorney of Queens County?

Mr. Hyatt: Yes.

The Master: That is all there is to it.

Mr. Chambers: Of course, that is all there is to it.

Mr. Ransom: Note my objection and exception.

MAYNARD H. SPEAR, recalled.

Direct examination continued.

By Mr. Ransom:

Q. Mr. Spear, referring to Complainant's Exhibits 60 and 61 for Identification, concerning which you testified at the last hearing, have you produced here today the vouchers, the original vouchers from the files of your company, kept under your direction, from which you took the various prices here shown?

A. Is that the exhibit of materials?

Q. Of materials.

207 A. Yes, I have (producing packages).

Mr. Ransom: I offer them in evidence.

Mr. Neumann: Objected to on the ground they are immaterial, irrelevant and incompetent, not within the province of this witness to testify to any of the facts set forth in that exhibit.

Mr. Hyatt: The District Attorney of Queens County joins in the objection on the same grounds.

Mr. Chambers: The Attorney General objects to them on the further ground that they are hearsay, secondary evidence, not properly proven, incompetent, irrelevant and immaterial. I guess that is enough.

Master: Are those the vouchers?

The Witness: These are the ones, and for 1919 are in these (indicating).

The Master: I do not know what that means, "These are the ones, and for 1919 are in these."

Q. Do you also produce here all of the vouchers?

Mr. Neumann: How about the objection? What ruling is there on the objection?

The Master: I have not heard any as yet, Mr. Neumann.

Mr. Neumann: I have not heard any ruling yet.

The Master: Neither have I. Your hearing is as good as mine. Go ahead.

Mr. Chambers: Is the question withdrawn?

Mr. Ransom: No.

Q. Have you also produced here all of the vouchers of the New York & Queens Gas Company from the files of your company 208 for the year 1919?

A. I have, with the exception of the coal and oil vouchers which have been—

Q. Already produced?

A. Already produced.

Q. And put in evidence. So far as the year 1919 and these exhibits 60 for Identification, 61 for Identification, and 62 for Identification are concerned, have you included in this bundle of 1919 vouchers, the vouchers from which you took the prices shown for 1919 on these exhibits?

A. I have.

Q. And so far as the other years, 1914, 1915, 1916, 1917 and 1918 are concerned, you have them in a separate bundle?

A. I have.

Mr. Ransom: Now I offer in evidence, first the vouchers from which these exhibits for identification were taken, as to the years 1914 to 1918.

The Master: That is this bundle (indicating)?

Mr. Ransom: That is that bundle.

The Master: And it is to this offer that the objections have already been made?

Mr. Neumann: That is right.

The Master: The objections are overruled.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Marked as one exhibit, Complainant's Exhibit 67.

Q. Mr. Spear, you have one or two bundles comprising all of the 1919 vouchers?

A. Yes, with the exception of—

209 Q. With the exception of the coal and oil vouchers which are already in evidence?

A. Yes.

The Master: What have you got, one or two?

The Witness: Two.

Mr. Ransom: I offer in evidence the 1919 vouchers, other than the coal and oil vouchers hitherto received.

Mr. Neumann: Same objection as heretofore made to the introduction of the other exhibits.

Mr. Hyatt: Same objection.

Mr. Chambers: Same objection.

The Master: I will assume that all counsel make the same objections, and they are overruled with exception.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

The Master: The bundles will be marked as one exhibit.

Marked Complainant's Exhibit 68.

Mr. Ransom: I now offer in evidence Complainant's Exhibits 60, 61 and 62 for identification.

Mr. Neumann: May we see them first?

Mr. Ransom: Those are the ones of which copies were given to the defendants the other day.

Mr. Neumann: Objected to on the ground that they are immaterial, irrelevant, incompetent, based on hearsay, not within the province of this witness to testify to these facts, according to his own testimony, if interrogated question by question; upon 210 the further ground that there is nothing shown here that this tabulation is correct, nor complete.

The Master: Objection overruled. The stenographer will mark them in evidence.

Mr. Chambers: The same objection for the Attorney General.

Mr. Hyatt: The City joins in the objection.

Mr. Ransom: The City joins in the objection? I do not understand that the City—

Mr. Hyatt: We join in the objection. I do not mean the City, I mean the District Attorney.

Marked Complainant's Exhibits 60, 61 and 62 in evidence.

Q. Mr. Spear, in the month of April, 1920, did you take up with the St. George Coal Company of 149 Broadway, New York City, the matter of obtaining broken coal for future requirements of your company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, in the present state of the record.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: The District Attorney of Queens County joins in the objection, and takes exception.

A. They telephoned me asking me if we would—

Mr. Neumann: One moment. I object to the witness testifying to the conversation, as incompetent, irrelevant, immaterial, and hearsay.

The Master: He just asked. Did you take up any negotiations?

The Witness: Yes.

211 Q. And was there some telephone conversation with a representative of the coal company?

A. There was.

Q. And subsequently was there an offer for the supply of coal quoted to you by the St. George Coal Company in writing?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.

The Master: Overruled.

Mr. Neumann: Exception.

A. There was.

Q. And is this communication dated April 9, 1920, such offer (handing witness)?

A. It is.

Mr. Ransom: I will have it marked for identification.

Marked Complainant's Exhibit No. 69 for Identification.

Mr. Hyatt: Of course, your honor, the District Attorney objects to the way the counsel for the complainant characterizes this communication. I think that is highly improper.

The Master: Next question.

Q. Mr. Spear, what was the maximum day's send-out of the New York & Queens Gas Company during the winter of 1919-1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not shown to be within the province of this witness to testify to any such fact.

The Master: I think I will sustain it on the last ground.

Mr. Ransom: Well, this witness is a gas manufacturer, and it has been shown by his qualifications.

212 By the Master:

Q. It is perfectly simple to ask this witness, do you know what it was?

A. I do.

Q. How do you know?

A. From the records of the company.

Q. That is the only way you know?

A. Yes.

Q. And the company has a manufacturing engineer?

A. Yes.

Q. And he knows, he makes the record, doesn't he?

A. He makes the record and turns it over to me.

The Master: Then we will have the manufacturing engineer here.

Mr. Ransom: Exception.

The Witness: And I am at the works every day and see these records made up.

The Master: That is why I asked you how you knew about it,

and you told me nothing. When I asked you what you knew about it I thought you would tell me that you knew something about it.

By Mr. Ransom:

Q. Mr. Spear, during what period were you in actual direct and personal charge of the operation of this plant?

Mr. Neumann: I object to that on the ground that it calls for the conclusion of the witness. It is the same as an agent proving his own authority.

Mr. Ransom: Well, I will withdraw it.

The Master: You need not withdraw it. When were you in direct charge of operations?

213 Mr. Neumann: Exception.

The Witness: From 1902 to 1905 my office was at the works.

The Master: That is not the question, where your office was. Were you running the plant?

The Witness: Yes.

The Master: During those years?

The Witness: Yes, and since that time I visited the plant practically every morning and am in constant touch with it.

Q. You have had personal charge of the making of gas in this and other plants?

A. Yes.

Mr. Neumann: Same objection.

The Master: Overruled.

Q. And do you keep in close and continuous contact with the works and with what goes on at the works?

Mr. Neumann: Objected to both as to form and substance.

The Master: Yes, I think I will sustain that. He has told us how close his contact is. He stops there every morning, he says.

Q. And is that the only time you are there?

A. Well, sometimes at other parts of the day, but I make it a rule to go there practically every morning, the first thing.

Q. Do you know the holder capacity of the New York & Queens Gas Company, excluding relief holders?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not shown to be within this witness' knowledge.

214 By the Master

Q. Do you know that?

A. I do.

Q. How do you know that?

A. Because I figured the capacity of the coal storage holder at 250,000 and the—

Q. Do you know what storage holders they have?

A. Oh, yes.

Q. Do you know where they are located?

A. Yes.

Q. Do you know their size?

A. Yes, sir.

Q. Tell us what their capacity is?

A. 1,250,000.

Mr. Neumann: I move to strike out the witness' answer, on the ground it is not responsive.

The Master: Motion denied.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. What is the rated manufacturing capacity of the plant of the New York & Queens Gas Company per day?

Mr. Neumann: Same objection as last urged.

The Master: That will be overruled.

Mr. Neumann: Exception.

Mr. Ransom: Present capacity.

A. Under its present blower system, with a low pressure blast, about a million and a half.

By the Master:

Q. What is it rated at; what do you report it at?

A. A million and a half. Well, you say report it at. In the Public Service Commission report we report the size of the 215 machines and the capacity of those machines.

Q. Are you not required to report the manufacturing capacity of the works?

A. The capacity of those machines.

Q. Just of the machines?

A. Yes. For instance, we report two 7 foot 6 inch machines at a capacity at 1,500,000 and the 8 foot 6 inch machines at a capacity of 1,250,000.

Q. So you have a total capacity of 2,700,000?

A. 2,750,000.

By Mr. Ransom:

Q. That is the capacity of the machines?

A. Of the machines.

Q. And with your present blast system your plant capacity is, you say, about a million and a half?

Mr. Neumann: Same objection.

The Master: I do not understand that.

A. Well, we cannot run all the machines at the same time, because there is usually one machine that is down for repair, rechecking and so forth.

Q. When your largest unit is shut down for repairs or otherwise, what is the largest capacity of your plant?

Mr. Neumann: Same objection as last urged.

Mr. Chambers: I do not think he stated that they do shut them down.

Mr. Neumann: The witness has shown by his own testimony that he is unqualified to answer these questions.

The Master: No, he has not shown that.

216 Mr. Chambers: He does not operate these machines.

The Master: He knows what machines they have there, and he knows what their capacity is. As I understand him, those machines there have a capacity of 2,750,000.

The Witness: Right.

The Master: Well, what are you trying to bring out?

Mr. Ransom: I am asking when the largest unit is shut down for repairs, or shut down through accident or otherwise, what is the manufacturing capacity.

The Master: Can't I see that myself? He said he had two units, one unit of 1,500,000 and another unit of —

The Witness: No, there are three units.

The Master: Give me the three units.

The Witness: There are two 7 foot 6 inch machines, each with a capacity of 750,000, that makes 1,500,000, then the 8 foot 6 machine with a capacity of 1,250,000.

By the Master

Q. So if your big unit is shut down I know how much is left?

A. Yes, with the present blast pressure. With the high pressure blast which we are going to instal the capacity will be 2,000,000.

Mr. Chambers: I move to strike that out.

Q. What do you mean your capacity will be 2,000,000 with the high pressure blast, part of your equipment or all of it?

A. All of it.

Q. But you have 2,750,000 with the low pressure blast?

A. Yes.

217 Q. What will that be with the high pressure blast?

A. About 2,000,000.

Q. Will it be less with the high pressure blast?

A. No, it will be one more, you see.

Q. I say what you have there now you say has a capacity of 2,750,000?

A. Yes.

Q. That is the low pressure blast?

A. Yes.

Q. What will that 2,750,000 be with the high pressure blast?

A. 4,000,000.

Q. 4,000,000?

A. Yes.

Mr. Neumann: Is that an estimate, Mr. Spear?

The Master: Of course it is an estimate. That is an engineering estimate of what it will do.

Mr. Neumann: Yes, that is why I brought it out. Here is a man presumably offered by the complainant for the purpose of proving his books and we have now gotten into engineering propositions.

The Master: Yes, they qualified him for a little more than testimony on the books.

Mr. Ransom: Very much more.

The Master: I will take him for that.

Mr. Neumann: I take exception to it.

Mr. Ransom: His primary qualifications were as gas maker.

By Mr. Ransom:

Q. Do you regard your present holder capacity as adequate for our present and prospective requirements?

18. Mr. Hyatt: I object on the ground he has not qualified as an engineer.

Mr. Neumann: And I object on the further ground that it calls for a conclusion of an expert on engineering matters, and that this witness has not yet been qualified on those matters.

Mr. Chambers: I want to state my objection.

The Master: I will sustain that objection; I will let the witness state what their present requirements are in his judgment.

Mr. Ransom: Well, as to holder capacity.

The Master: What?

Mr. Ransom: As to holder capacity.

The Master: That is your question, holder capacity, is it not?

Mr. Ransom: Well, of course the question of holder capacity has relation to maximum demand and volume of sales.

The Master: Then why don't you bring out all the elements so can see which is which?

Mr. Ransom: All right.

Q. Do you know the maximum day's send-out of your company during the winter of 1919-1920?

A. I do.

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness.

The Master: By that you mean the maximum sales, practically, one day?

Mr. Ransom: Or going out to the consumers.

The Master: Called for.

9. Mr. Ransom: Called for, and in the case of a company like this, which is not connected with—

The Master: Yes, I will let him state it.

Mr. Neumann: Exception.

Q. What was it?

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Neumann: Exception.

A. 1,698,000 cubic feet.

Q. What was the maximum day's send-out of the company during the winter of 1918-1919?

Mr. Neumann: Same objection as last urged.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 1,189,000 cubic feet.

Q. What was the highest send-out at any time in the history of the company for seven consecutive days?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness so to testify. It is a highly technical engineering calculation, to say the least.

The Master: You do not mean that. What is there of a highly technical engineering problem in knowing how much gas is sold in seven days?

Mr. Hyatt: Does he know this of his own knowledge, your Honor?

Mr. Neumann: This man is in the office and he knows nothing about the actual send-out each day; so how would he be able to testify that it was?

220 The Master: How would Judge Gary or the Board of Directors of the Steel Company know how much they sold in three months?

Mr. Neumann: He might not undertake to testify to that.

The Master: Objection overruled.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

The Master: How would I know how many cases I have in my office?

Mr. Neumann: Would you testify to that?

The Master: Yes.

Mr. Neumann: Of your own knowledge?

The Master: Sure, after I found out from the record what I had.

A. 11,044,000 cubic feet.

Q. When was that?

A. That was from December 15th to December 21st, 1919, inclusive.

Q. Can you give the figures for each day, and the total for the seven days, and the average during the seven days?

A. December 15th was 1,510,000.

Mr. Hyatt: Same objection to this testimony.

A. (continued). December 16th, 1,522,000; December 17th, 1,549,000; December 18th, 1,668,000; December 19th, 1,698,000; December 20th, 1,410,000; December 21st, 1,687,000. The total is 11,044,000. The average is 1,578,000.

The Master: What did you say your holder capacity was?

The Witness: 1,250,000.

Mr. Neumann: You are now reading this from a memorandum, are you, Mr. Spear?

The Witness: Yes.

221 Mr. Ransom: I object to the interruption.

The Master: I will allow it.

Mr. Neumann: I want the record to show just what he is doing.

Q. Do you know how many meters your company has in active service as of the present time, say, April, 1920?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness to testify to that fact.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I do.

Q. What is that number?

A. 10,711 meters.

By Mr. Neumann:

Q. You are reading that from a memorandum, are you, Mr. Spear?

A. Yes.

By Mr. Hyatt:

Q. You wouldn't know it without the memorandum?

Mr. Ransom: I object to the interruption of the self-constituted representative of the District Attorney of Queens County.

The Master: Objection sustained.

By Mr. Ransom:

Q. What is the main mileage of the company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within this witness' knowledge.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 124.7 miles.

222 Q. Have you personally kept the main records of the company?

A. I have.

Q. Since when?

A. Since 1903.

Q. That is the main records of this company throughout its history have been personally kept by you?

A. With the exception of the period that I was with the Williamsport Gas Company, 1905 to 1906.

Q. And they are kept in your handwriting?

A. Yes, sir.

Q. Were they correctly kept, to your knowledge?

A. They were.

Q. How many meters in service have you per mile of mains?

Mr. Neuman: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 86.

The Master: This line of inquiry, Mr. Spear, that had to do with your holder capacity—have you in your judgment, based on your experience, sufficient holder capacity now?

Mr. Neumann: I object to the Master's question on the ground that it is incompetent, irrelevant and immaterial, and that this witness is not properly qualified to answer that question.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Just at the present time, but if the—

223 The Master: Just at the present time you have?

The Witness: Yes.

Q. Do you regard your present holder capacity as adequate for your prospective requirements?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Hyatt: I object to it on the ground that the witness is not qualified as an engineer.

Mr. Chambers: I object to it.

Mr. Neumann: It is highly speculative anyway.

The Master: Objection sustained.

The Witness: We have to take care of these things.

Q. Having in mind the increase that you testified has taken place in your maximum day's requirement, and the increase in sales, do you regard your present holder capacity as adequate?

The Master: For what, for the future?

Mr. Ransom: For the future.

Mr. Chambers: I object to it on the ground that the witness is not qualified.

Mr. Hyatt: The District Attorney of Queens also objects on the same ground.

The Master: What testimony is there here as to the percentage of increase in the sales?

Mr. Ransom: Increase in the maximum day's demand—I am not sure that the increase in sales has been proved.

The Master: I will let the witness state this, what, based on his experience, the holder capacity ought to be in relation to the maximum sales.

24 Mr. Neumann: That is, of course, over our objection.

The Master: I suppose are objecting to it now?

Mr. Neumann: I am objecting now.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

The Master: What do you say the holder capacity should be in relation to the maximum sales?

The Witness: It ought to be equal to the maximum day's demand in an isolated plant such as ours.

Mr. Neumann: I move to strike out from the answer the words, "an isolated plant such as ours."

The Master: Motion denied.

Mr. Neumann: Exception.

Q. During recent years have the annual sales of your company increased or decreased?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Increased.

Q. Can you give an accurate or approximate statement of the increase in sales during recent years?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

25 A. I know that our increase for the three months of 1920 is 31 per cent of the same corresponding months for 1919. April is about 28 per cent.

The Master: Has there been an increase in maximum days?

Mr. Ransom: We have already shown that. The increase was from 1,189,000 on the first day of January, 1919, to 1,698,000 cubic feet on the 19th of December, 1919.

The Master: How did that compare with 1918? Was there a day in 1918 as high as any day in 1919?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: No.

The Master: Anywhere near it?

The Witness: No; I would say that the highest day in 1918 was not over 1,189,000 that we had in January, 1919.

The Master: Have you been increasing your main mileage over there in the last year?

The Witness: Yes.

The Master: More meters being put out?

The Witness: Yes.

The Master: More people coming into the section?

The Witness: Yes, and building is quite active.

Q. Have you recently been required by order of the defendant, the Public Service Commission, to make any considerable extensions of your main mileage?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The order of the Commission is the best proof of that.

The Master: Objection sustained.

226 Q. Have you recently made any considerable extension of mains into Douglaston?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. We have.

The Master: By "considerable" you mean what?

The Witness: About 15 miles. That is about 12 per cent of our total mileage.

Q. When did the New York & Queens Gas Company first begin to secure its supply of gas oil through being included in the Consolidated Gas Company's contract?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not within the province of this witness so to testify.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. May, 1913.

Mr. Hyatt: No foundation has been laid for a lot of these questions.

Mr. Neumann: We are jumping around like a hen on a hot griddle. A moment ago we were up in Douglaston, and now we are back in the oil contracts.

Q. At that time from whom were you obtaining your gas oil?

Mr. Neumann: I object to that on the same grounds.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Standard Oil Company of New York.

Q. At what price?

227 Q. Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 6.1 cent. May I add, that those contracts are now on file before the Master.

Mr. Ransom: Not in this case.

The Master: There is nothing on file before me.

Q. At that time had you already negotiated a contract with another company for your supply of future gas oil?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Are we at all interested in that ancient history, so far as this case in concerned?

Mr. Ransom: I will withdraw it at this time if you think it desirable.

Mr. Neumann: If the Master please, the vice of this line of examination consists in this, that here we have a man on the stand apparently permitted to testify to the prices of oil, with no opportunity on the part of the defendants to cross examine him, because the record indicates quite clearly that he does not make the contracts himself, and the contracts are not in evidence, and yet he is permitted to testify to the price of oil, and the price that the contract contains.

Mr. Ransom: He has paid—

The Master: Mr. Neumann, this witness has stated that in 1913 he bought oil from the Standard Oil Company at 6.1 cents. That is all he has testified.

228 Mr. Neumann: But he also testified that the oil contracts were made for him by the Consolidated Gas Company.

Mr. Ransom: Not up to that time. After that, but no before.

The Master: I haven't any price before me at all now as to what was paid after that date, except as the oil vouchers are in evidence.

Mr. Hyatt: May I ask your Honor whether or not this witness is a bookkeeper, or what particular function he subserves in the office of the complainant company, or is he a general utility man?

The Master: I will answer that by suggesting that you read the record that preceded your entrance into the case today.

Mr. Hyatt: He seems to cover about the whole scope of the work done by this complainant.

The Master: You read the record of his testimony.

Q. Why is it deemed advisable, Mr. Spear, to have the superintendent of the plant, Mr. Morrison, reside at the works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Hyatt: Is there any proof in the record that he does reside there?

Mr. Ransom: Mr. Spear testified to that.

The Master: The trouble with Mr. Hyatt is that he did not hear a great deal of what went before.

Mr. Chambers: I object to that on the ground that that is a question for the court to determine, and not the subject of opinion testimony.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.

The Master: Why is it incompetent?

Mr. Neumann: It is incompetent probably for this reason, among others: That in the first place they would have to prove that it was used and useful in the gas business.

The Master: Why is this question incompetent?

Mr. Hyatt: What does it tend to prove?

The Master: I am not talking about its materiality or relevancy, I am talking about competency. The objection is overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Mr. Chambers: Exception.

A. So that he can be in constant touch at all hours of the day and night with the operation of the plant. In case of any trouble coming up at night he can be called quickly.

The Master: You don't think it would be as well if he lived six miles away?

The Witness: No, sir.

Mr. Deegan: How about across the street?

Q. Is it the judgment of the officers of the company that there are substantial advantages to the company in having a superintendent on the job twenty-four hours in the day?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. Neumann: I object to it.

The Master: Objection sustained as already covered.

Mr. Chambers: Exception.

230 Mr. Neumann: Exception.

The Master: What is the name of the man that runs that plant over there?

The Witness: Morrison.

Q. Mr. Spear, have you produced here the original main records of your company?

A. I have.

Q. As kept by you?

Mr. Neumann: I move to strike out from that question the words "as kept by you." There is no proof of that in this record at this time.

Mr. Ransom: He has testified that he kept them in his own handwriting.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I have.

Q. This is your handwriting?

A. It is.

The Master: How far back does your main record go, back to the beginning?

The Witness: April 1, 1901.

Q. That is, this goes back to the formation of the present company?

A. It does.

Q. The records from the formation of this company likewise are entirely kept in your handwriting?

A. Yes.

Q. And the entries were made therein by you correctly?

A. They were.

Q. Just what period are the records made by any one else? Can you just locate that period?

The Master: He said 1905 and 1906.

231 A. I made up this book after I came back from Williamsport from the old records.

Q. Are there any of these entries not in your handwriting?

A. Yes, there are three.

Q. What three?

A. Nos. 801, 802 and 803, following January 1, 1919.

Q. In whose handwriting are those?

A. William Raynor.

Q. Have you ever personally gone over those three entries?

A. No, I have not.

Q. The others are entirely yours?

A. They only amount to 380 feet.

Q. The others are entirely in your handwriting?

A. Yes, sir.

Mr. Ransom: May I have this marked for identification?

The Master: The main record book to which the witness has just referred, is now being marked for identification.

Book marked Complainant's Exhibit 70 for identification.

Q. Was this book turned over by you to Mr. Miller when he began his work, or shortly thereafter?

A. It was.

The Master: By this book you mean what?

Mr. Ransom: I mean Complainant's Exhibit 70 for Identification.

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WILLIAM RAYNOR recalled.

Direct examination continued.

By Mr. Ransom:

Q. Mr. Raynor, referring to items Nos. 801, 802 and 803, January, 1919, in Complainant's Exhibit 70 for identification, concerning which Mr. Spear just testified, are those three entries in your handwriting?

A. They are.

Q. And were made by you at that time?

A. They were.

Q. And were correctly made by you?

A. Yes, sir.

Mr. Van Steenburgh: On what page are those entries?

Mr. Ransom: It is the page which in lead pencil paging is marked "page 106."

The Master: Mr. Van Steenburgh who represents the Queens County District Attorney here?

Mr. Van Steenburgh: As near as I know, I am counsel for him, that is all.

The Master: Is there any other counsel?

Mr. Van Steenburgh: Not that I know of, except the statement made here the other day.

The Master: Do you recognize any other counsel for the District Attorney of Queens County?

Mr. Van Steenburgh: I only know what Mr. Morrissey said, and what Mr. O'Brien's assistant stated.

The Master: Is it your attitude that you represent the District Attorney of Queens County?

233 Mr. Van Steenburgh: I understand the City has been asked, or the Corporation Counsel, has been asked to appear for him.

The Master: The only purpose of my inquiry is that I am not going to permit two counsel for one defendant to examine or interrupt.

Mr. Van Steenburgh: That is the usual rule.

The Master: I wanted to know whom to recognize, whether to recognize you or to recognize Mr. Hyatt.

Mr. Van Steenburgh: I think there will be no difficulty about that when it comes to cross-examination.

The Master: Well, how about other matters?

Mr. Van Steenburgh: We will have to wait until a subsequent hearing before we can answer that.

Mr. Ransom: I offer in evidence Complainant's Exhibit 70 for Identification.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Book received in evidence and marked Complainant's Exhibit 70.
(Witness excused.)

234 WILLIAM J. FOY, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Foy, where do you live?

A. 68 Prospect Avenue, Flushing.

Q. What is your business?

A. General bookkeeper in the New York & Queens Gas Company.

Q. What education have you had in your line of business?

A. I studied bookkeeping in the Flushing High School, and later took a course in a business college.

Q. Bookkeeping course, and accountancy?

A. Yes, sir.

Q. What has been your business experience?

A. I started in as a clerk for the Standard Mail Order Company, and later went with the New York & Queens Gas Company.

Q. What kind of a clerk were you with the Standard Mail Order Company?

A. Clerk in the Auditing Department.

Q. Audit clerk?

A. Yes, sir.

Mr. Neumann: Why not let the witness testify what he did.

Q. In 1914 what?

A. In 1914 to 1917 I was assistant to Mr. Raynor, helping on the general books, working on consumers' ledgers, and at different times acting as cashier.

Q. This was with the New York & Queens Gas Company?

235 A. With the New York & Queens Gas Company.

Q. That lasted down to what time?

A. October, 1917.

Q. Then what did you do?

A. I then went with the L. W. F. Engineering Company. Later on I went to Bridgeport with the Remington U. M. C. Company as a machinist or lathe hand.

Q. Then after that what?

A. From there I went with the Federal Reserve Bank as a clerk for a few months, until May, 1919, when I went back to the New York & Queens Gas Company as general bookkeeper.

Q. In your position as general bookkeeper have you, under Mr. Spear and Mr. Raynor, had since May, 1919, charge of the keeping of the general books of this company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not within the province of this witness so to testify.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. From about the middle of May, 1919.

Q. Are you now taking any night course in accountancy?

A. Yes, sir.

Q. Where?

A. Pace & Pace Institute.

Q. Since May, 1918, are substantially all of the entries in the general books of account in your own handwriting?

A. Yes, with the possible exception of a few entries that have been made by Mr. Raynor.

236 Q. In the journal?

A. In the journal.

Q. Do you generally make the various entries in the general books of account, beginning with the journal entry and including the posting to the general ledger and other books?

A. Yes, sir.

Q. During the period that the entries in the books have been made by you have they been correctly made by you?

A. They have.

Q. From the original reports and data furnished to you by the officers of the company?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and most leading. The witness Rought to testify what he took his entries from, not the witness Ransom.

The Master: Objection overruled

Mr. Neumann: Exception.

A. They have.

Mr. Ransom: That is all.

The Master: I think you can cross-examine this witness and get through with him.

Mr. Chambers: Do you want us to cross-examine?

The Master: Yes, I think so.

Cross-examination.

By Mr. Chambers:

Q. You are head bookkeeper you say?

A. General bookkeeper.

Q. How old are you?

A. Twenty-three.

Q. Who is over you as bookkeeper now?

A. Mr. Raynor.

237 Q. Is he the head bookkeeper?

A. Mr. Raynor is assistant secretary of the company.

Q. And he is your immediate superior, is he?

A. He is.

Q. How many under you as bookkeepers?

A. No one.

Q. Just he and you attend to the books?

A. The general books.

Q. Now, what books do you keep?

A. General ledger, accounts payable ledger, operating expense ledger, journal, general cash book.

Q. At the present time?

A. At the present time.

Q. What did they keep when you first entered the service of the company, the same kind of books?

A. Yes, sir.

Q. When did you say you entered the service of the company?

A. About the middle of May, 1919.

The Master: That is the last time?

The Witness: The last time.

Q. When were you there before that?

A. From 1913 to 1917.

Q. You must have been pretty young in 1913. Were you head bookkeeper then?

A. No, sir.

Q. What was your position then?

A. I started in as an office boy.

Q. You were not keeping the books that first period?

A. No, sir.

Q. Where do you get your data for entries in the books, say the ledger?

238 A. In the ledger?

Q. Yes, the entries you make in the ledger?

A. From the journal.

Q. You get your data all from the journal?

A. I enter from the journal to the ledger.

Q. Where do you get your data for entries made in the journal?

A. From the various reports.

Q. Whose reports?

A. Made up by Mr. Spear or by Mr. Raynor.

Q. Mr. Spear or Mr. Raynor?

A. Yes, sir.

Q. What kind of reports are they?

A. On coal used for the month, oil used for the month, water used for the month, stationery used, different supplies used at the works.

Q. Anything else?

A. I get data from the bills, the vouchers that come into the company.

Q. And those are handed to you?

A. Yes, sir.

Q. And you enter them in the journal?

A. Yes, sir.

Q. You don't know anything about the correctness of those yourself?

A. I check all additions and extensions?

Q. What additions and extensions?

A. On the bills.

Q. But you don't know anything whether the coal was received, or anything about that, of your own knowledge, except what is on the voucher?

A. Except where it is o. k'd on the voucher.

Q. You go by that?

Q. I go by that.

239 Q. And you haven't any original knowledge of any of these matters except what is on these papers, is that right?

A. You mean that I do not receive the material?

Q. Yes, you don't know whether the oil has been received or anything like that, do you, of your own knowledge?

A. Only from where the bill has been o. k'd. that it has been received.

Q. If that o. k. was not on there you would not know whether it was or not?

A. No, sir.

Q. You rely on that o. k.?

A. I do.

Q. Who puts that o. k. on there?

A. For what?

Q. In cases where the o. k. is on?

A. The one who receives the goods.

Q. Well, who is that?

A. Different people for different kinds of material.

Q. What do you do, have half a dozen different kinds of men who o. k. the bills?

A. There may be in some cases.

Q. Who are some of them?

A. Mr. Morrison at the works; Mr. McKenna at the shop.

Q. What kind of goods does Mr. McKenna receive?

A. Meter materials.

Q. He is in charge of meter materials, is he?

A. He is.

Q. And Mr. Morrison is what—what kind of goods does he attend to?

A. Anything received at the works.

240 Q. Like coal and oil?

A. Coal and oil.

Q. And who else puts o. ks. on?

A. Mr. Spear.

Q. What kind of goods does he take charge of, or what kind of work?

A. He does not o. k. for material.

Q. What does he o. k. for?

A. He o. ks. the vouchers for final payment, vouchers to be passed for payment.

Q. Who handles the labor?

A. At the works the pay roll is made up by Mr. Morrison; at the shop it is made up by Mr. McKenna; I make up the office pay roll.

Q. Who are some of the other men who o. k.? You said there were a number of them, and you have named three?

A. Well, anything that comes in the office that I personally see myself, I o. k. for.

Q. Is there anyone else?

A. That is all I think.

Q. Just four of you?

A. Yes.

Q. Now, you are speaking of 1919, are you?

A. Yes, sir.

Q. You don't know anything about the books prior to that?

A. No, sir.

Q. You don't hold any office in the company, do you?

A. No, sir.

Q. What do you do with these vouchers after you make the entries in the journal?

A. I hold them for payment until I draw checks for them.

241 Q. You don't sign the checks, do you?

A. No, sir.

Q. What do you do, just make ou- the amount, and to whom it is payable?

A. Yes, sir.

Q. To whom do you deliver those checks for signature?

A. Mr. Raynor first, and Mr. Spear.

Q. How do you keep track of the labor? That comes in on a voucher, does it, o. k.'d by Mr. McKenna, did you say?

A. Yes, sir.

Q. How does that come in, on kind of a pay roll?

A. A pay roll.

Q. Each man's name set down?

A. It is.

Q. And with the amount of time that he has put in?

A. Yes, sir.

Q. And the amount he is to receive?

A. Yes, sir.

Q. Is everybody in the shop over there included, in the plant?

A. On one pay roll?

Q. For instance, is your time on that same pay roll?

A. Not on the same payroll with the shop, no, sir.

Q. You have two pay rolls?

A. Three pay rolls.

Q. One for the shops?

A. Yes, sir.

Q. One for the office?

A. Yes, sir.

242 Q. And what is the other one for?

A. The works.

Q. And those are separate?

A. Yes, sir.

Q. Mr. McKenna o. ks. the ones from the shop?

A. He does.

Q. Who o. ks. the ones from the works?

A. Mr. Morrison.

Q. And who o. ks. the one from the office?

A. I put my name on it, and Mr. Raynor signs it.

Q. What about the higher salaried officers like the treasurer, for instance, is that on it?

A. No, sir.

Q. Any of them?

A. No, sir.

Q. Do you know anything about those?

Q. What do you mean?

Q. Do you enter up the salaries of anybody except those three?

Q. I draw a check for them.

Q. For everybody who is paid by the company?

A. I do.

Q. That includes the superintendent?

A. It does.

Q. And the other officers?

A. Yes.

Q. Do you ever draw any for a man by the name of Alrich?

A. I do not.

Q. Or Mr. Carter, who is treasurer?

A. I do not.

Q. Or Mr. Brundage?

A. I do not.

Q. Or Mr. Palmer?

A. I do not.

243 Q. You never have anything to do with any of those?

A. I do not.

Q. Who pays those men I have named, or don't they appear at all, or don't you know? Do you know?

A. No, sir.

Q. Those don't go through your books at all?

A. No, sir.

Mr. Ransom. That assumes that there is anything to go through the books.

Q. Does anybody audit your books?

A. Yes.

Q. Who does that?

A. I don't know the name of the gentleman, over in New York.

Q. Is that Mr. Palmer or Mr. Brundage?

A. Mr. Palmer may do it.

Q. Did you ever see them auditing your books?

A. I did not.

Q. Then you don't know whether they do audit them or not?

A. No, I don't.

Q. Do you know whether anybody does audit your books?

A. I never seen any one auditing them.

Q. So you don't know whether there is any fault found with your bookkeeping or not?

A. I never heard of any.

Q. You never heard of any?

A. No, sir.

Q. No corrections made of any kind?

A. I haven't seen any.

Q. You have made some yourself, haven't you?

A. I have.

241 Q. You find some errors once in a while, don't you?

A. I do.

Q. And you find some errors in the vouchers don't you sometimes, the vouchers that you enter in the journal?

A. Errors in the vouchers or errors made by me?

Q. Errors in the vouchers?

A. If I find an error in a voucher I never put it through until it is corrected.

Q. Do you find some errors like that?

A. I have in cases found errors in addition or multiplication made by the company sending in the bill.

By Mr. Neumann:

Q. How frequently do you take a trial balance?

A. Once a month.

Q. Do you do that yourself?

A. I do.

Q. Do your duties keep you in the office continuously each day, or is there part of the day that you are out, excluding the lunch hour?

A. I am inside all day.

Q. Inside all day?

A. Yes, sir.

Q. You are not away from the office?

A. No, sir.

Q. So that if the books were audited at any time by any one you would know it?

A. I would.

Q. What I mean is this, to be fair with you, there could not be any possibility of those books being audited and you not know of it?

A. They might be audited and I still not see it.

245 Q. That is, it would have to be done at some other time than during the day in order to be audited and you not see it?

A. No.

Q. What do you mean by that answer "no?"

A. The books are sent to New York to be audited.

Q. They are sent to New York to be audited?

A. They are.

Q. Then you did not mean to be understood to testify that the books are not audited?

A. No, I said I never seen them being audited.

Q. How frequently are they sent to New York?

A. Once a month.

Q. For how many days do they remain in New York?

A. Part of one day.

Q. And is that usually around the last day of the month?

A. No, sir.

Q. When, what time of the month is it?

A. Around the middle of the month.

Q. And is that the uniform custom, around the middle of the month?

A. It is.

Q. Do you know when your board of directors meet?

A. I do not.

Q. Do you know whether they meet in Flushing or whether they meet in New York?

A. They meet in New York when they meet.

Q. They don't meet in Flushing?

A. Not as far as I know.

Q. So far as you know, you have not seen any board of directors meetings or been present while there were any board of directors meetings held in Flushing?

246 Mr. Ransom: I object to that as incompetent and not cross examination and not within the scope of anything concerning which this witness has been interrogated.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I do not.

Q. Now, Mr. Foy, if I understand your testimony correctly, it is to this effect, that if the underlying data from which you make the entries is incorrect, then the entries in the books are also incorrect, and if the underlying data is correct, then the entries in the books are correct—is that true?

A. I never checked back any underlying data. I take what is given to me as being correct.

Q. So that if there are any errors in this underlying—

The Master: Don't repeat that, it is argumentative.

Q. Do you know what the works reports are?

A. Yes, sir.

Q. The works reports contain statements in Mr. Morrison's handwriting as to coal and oil, do they?

A. They do.

Q. Do you use those works reports in order to make entries in the books?

A. I do not.

Q. Where do you obtain—from what source do you obtain the information that is contained in the books as to the amount of coal that is used?

A. From Mr. Spear.

Q. Is that a personal direction from him, a verbal direction?

A. It is not.

247 Q. Is it in writing?

A. It is.

Q. Is it in the form of a report?

A. It is.

Q. And on file in your office?

A. It is.

Q. And from which you make entries in the books?

A. I do.

Q. And is that true likewise of the station reports?

A. What station reports are you referring to?

Q. The information that is contained on that. Do you know what a station report is?

A. I do not.

Q. Do you know whether your company keeps a book called "The Manufacturing Station Report"?

A. Book?

Q. Yes.

A. I do not.

Q. Do they keep loose leaf records?

A. Of what?

Q. Of the manufacturing stations?

A. There is a manufacturing report that comes in from the works once a month.

Q. What form is that in, is it in a book or loose leaf?

A. Why, it is merely one sheet. It is not kept in book form, but folded.

Q. Whose handwriting is that in?

A. Mr. Morrison's.

Q. And do you make entries direct from that in the book, or is there some intermediate from which you make the entries?

248 A. There is an intermediate report from which I make the entry.

Q. Who makes that intermediate report?

A. Mr. Spear.

Q. And that is true also of all of the other reports, is it, that are handed up from time to time, they are first given to Mr. Spear and he makes a report to you, and thereupon you made entries in the books from the report handed to you by Mr. Spear?

A. I do.

Q. While you were testifying as to your qualification, there was a part of the time that you were not engaged as a bookkeeper. What period of time was that?

A. October, 1917 to May, 1919.

Q. What occupation were you engaged in then?

A. From January, 1918 to November, 1918, employed as a lathe hand, Remington U. M. C. Company.

Q. What do the letters "U. M. C." mean?

A. Remington Union Metallic Company.

Q. You had nothing to do during that period of time with book-keeping at all?

A. I did not.

Mr. Neumann: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. Foy, when the books come back from this trip to New York for audit, do they bear any stamp or certification of audit which you find on them?

A. They do.

Q. Showing an audit as of a certain date?

A. A stamp on there marked "Audit Committee" with the initials on it.

249 Q. And date?

A. And date.

Q. Before any invoice is paid is it approved by Mr. Spear?

A. It is.

Q. When invoices come to you do you or would you make any entry from a bill into the books of account unless it had been O. K'd by the proper person?

Mr. Neumann: I object to that as immaterial.

Mr. Hyatt: And calling for a conclusion.

Mr. Neumann: Certainly, who is the proper person?

The Master: Objection sustained.

Q. Would you enter and do you enter in the books any bill or voucher for any kind of materials or supplies unless and until it has been O. K'd by the head of the department receiving or charged with the duty of receiving the supplies?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. It has been shown by this witness already that he pays some bills on the O. K. of Mr. Spear, who has charge of no particular department.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No, I do not.

Mr. Ransom: That is all.

(Witness excused.)

250 JOHN J. HALLERAN, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside, Mr. Halleran?

A. Flushing, Long Island.

Q. What is your business?

A. Real estate broker and appraiser.

Q. Auctioneer of real estate and the like?

A. Yes.

Q. Where is your place of business?

A. Flushing, Long Island, southwest corner of Broadway and South Prince Street.

Q. How long have you lived in Flushing?

A. Forty-five years, all my life, practically.

Q. How long have you been engaged in the real estate business in Flushing?

A. About fifteen years.

Q. Have you ever held any public office in the City of New York?

A. Yes, sir, I was Commissioner of Taxes and Assessments.

Q. During what administration?

A. During the administrations of Mayors McClellan, Gaynor and Mitchell, upwards of about ten years.

Q. And your duties in the Department of Taxes and Assessments related especially to the Borough of Queens?

A. Borough of Queens and the City of New York.

Q. Are you connected with any corporation or institution engaged in dealing in real estate mortgages and the like?

251 A. Yes, I am a director of the First Mortgage Guarantee Company of Long Island City, a member of the executive committee, and a member of the board of directors.

Q. What does that company or its executive committee do?

A. Buys and sells mortgages, makes loans on properties in Queens Borough.

Q. Loans on real estate?

A. Yes, sir.

Q. Buys and sells real estate mortgages?

A. Yes, sir.

Q. In Flushing and other parts of Queens Borough?

A. Yes, sir.

Q. In what ward of the Borough of Queens in Flushing?

A. The Third Ward.

Q. Do you know whether the Third Ward of the Borough of Queens comprises the same territory as the former town of Flushing in the County of Queens?

A. It does, the exact territory.

Q. Have you had experience in buying, selling and appraising real estate in the old town of Flushing in the Third Ward of the Borough of Queens?

A. I have.

Q. You said about how many years, all told?

A. Fifteen years.

Q. Have you kept yourself informed upon sales, leases, mortgages and other transfers relating to real estate in the Third Ward of the Borough of Queens during those fifteen years?

A. I have.

252 Q. Have you made many appraisals of real estate in this Third Ward of the Borough of Queens?

A. Yes, very many, hundreds, I should say, throughout the entire ward, appraisals for real estate mortgages, transfer tax purposes, and other appraisals.

Q. Are you, and have you been familiar with the values of real estate in the Third Ward of the Borough of Queens, and particularly in the vicinity of Myrtle Avenue and Farrington Street in the former village of Flushing?

A. Yes, sir.

Q. Are you and have you been familiar with the property of the New York & Queens Gas Company, situated at the corner of Myrtle Avenue and Farrington Street in the old village of Flushing?

A. Yes, sir.

Q. Did you at the request of the New York & Queens Gas Company make an appraisal of certain property as of the New York & Queens Gas Company at or near the corner of Myrtle Avenue and Farrington Street, in Block 170 and Block 171?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and no time fixed.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I did.

Q. As of what time did you value this property that you were asked to appraise?

A. The 2nd of April, 1920.

The Master: What was this land?

253 The Witness: Land.

The Master: Just land?

The Witness: Just land.

The Master: Just the land for the operating plant, that the operating plant is on?

The Witness: Exactly.

Q. You inspected this property personally for this purpose?

A. I did.

Q. You see this property frequently?

A. Yes, sir.

Q. Will you briefly describe the property which you were asked to appraise and which you did appraise? First Lot 31, Block 170?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial. In the present state of the record

the complainant has not yet proven what land the New York & Queens Gas Company does own or possess. The witness Alrich attempted to testify—

The Master: I know what the witness Alrich testified. Is that the ground of your objection?

Mr. Neumann: Yes.

The Master: I overrule it on that ground.

Mr. Neumann: Exception.

Mr. Hyatt: Does not the question involve also the question of ownership?

The Master: No. I don't care who owns the property that Mr. Halleran has been asked to appraise.

Mr. Hyatt: It may be held under a lease, and in that event the value of the property to the company would be very much less.

254 The Master: Yes, but we will hear what Mr. Halleran was asked to appraise.

Mr. Hyatt: How can he testify to the value of a property as to which there is no proof of ownership?

The Master: When you ask a question like that, you always draw fire from me. Is there any reason why I could not ask Mr. Halleran to go and appraise the Equitable Building?

Mr. Hyatt: I guess not, but what would that prove?

The Master: I don't know that it proves anything, but he was asked to appraise something. I am going to find out what it was that he was asked to appraise.

Mr. Hyatt: The question involves a matter of ownership.

The Master: It does not at all.

Mr. Hyatt: I would like to hear the question read.

The Master: No, you will not hear it read. I heard it.

Q. What did you appraise?

A. The property bounded on the north by Center Street; on the east by Farrington Street; on the south by Myrtle Avenue; on the west by Byrd's Alley. That would be described at lot 31, block 170.

The Master: On the tax map?

The Witness: On the tax map.

Q. What frontage on Myrtle Avenue?

A. Frontage on Myrtle Avenue, 334.09 feet; 298.32 feet on Farrington Street.

Q. What is its frontage on Byrd's Alley?

A. Bounded on the west by Byrd's Alley, having a frontage there of approximately 300.72 feet.

255 The Master: According to the tax map?

The Witness: Yes.

The Master: All these dimensions are according to the tax map?

The Witness: No, these dimensions were furnished to me by the Gas Company, which I am informed is an exact survey.

Mr. Neumann: In view of that answer I move to strike out the witness' entire answer, on the ground that the survey is not in evidence here.

The Master: I will let it stand.

Mr. Neumann: Exception.

Q. Now, what about Lot 40, Block 171?

A. Lot 40, Block 171, is located on the north side of Center Street, 150 feet west of Farrington Street. It is 125.85 front by 100 feet in depth.

The Master: Where did you get those dimensions?

The Witness: Those dimensions were furnished also by the company?

Mr. Neumann: I make the same motion to strike out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. On the basis of those dimensions what is the number of square feet in Lot 40, Block 171?

A. Lot 40, Block 171, the number of square feet is 12,585.

The Master: Based on the dimensions given you?

The Witness: Based on the dimensions and the diagram furnished by the company.

Q. What in a similar way is the number of square feet in Lot 31, Block 170?

256 A. Lot 37, Block 170 —

Q. Lot 37?

A. Lot 31, Block 170, is the large parcel bounded on the north by Center Street, on the east by Farrington Street, on the south by Myrtle Avenue, on the west by Byrd's Alley, containing 92,231⁵⁰ square feet.

Q. You have been familiar, Mr. Halleran, with the prices at which other parcels of land in that neighborhood have been bought and sold and mortgaged and leased?

A. I have been.

Q. Will you please state, Mr. Halleran, what in your opinion, as of the time of your appraisal, was the value unimproved of the parcels of real property which you have described, Lot 31, Block 170, Lot 40, Block 171, in the Third Ward of the Borough of Queens?

Mr. Hyatt: Objected to as incompetent, irrelevant and immaterial, no basis for the opinion that the witness is about to give. I think the basis ought to be on the record so that everybody could determine whether his opinion is a reasonable one.

Mr. Chambers: I object to the question upon the following grounds: That the time of which the witness speaks, April 2, 1920, is an abnormal time, and the values or prices as of that date, or as of the present time, are abnormal and unusual and no test of the true value of the property. On the further ground that it is incompetent, irrelevant and immaterial and not the proper value—if it is any value—to be placed upon the property of this public service for rate-making purposes.

257 I object upon the further ground that the witness has not been shown to be qualified to give the value of this kind of property.

The Master: Have I heard all of the objections?

Mr. Neumann: The Public Service Commission joins in all of them.

The Master: As to the last ground first, the Master rules that Mr. Halloran has been shown on this record to be fully qualified to testify as an expert. Going back to the other grounds, your contention, Judge Ransom, is that you are entitled to a return upon the present value of the property?

Mr. Ransom: It is.

The Master: And your contention, Mr. Chambers, is that the complainant is not entitled to a return on the present value of the property?

Mr. Chambers: It is.

The Master: What is your contention as to the rate base?

Mr. Chambers: That is one thing.

The Master: Tell me what your contention is as to the basis on which the return must be made.

Mr. Chambers: On the land?

The Master: Yes.

Mr. Chambers: The cost to the company of this land and, if that is not taken—I say that is the best rule to follow, and if that is not taken, then the fair and reasonable value of this land—pre-war prices, and not in any abnormal period.

The Master: For the record I will state that my opinion is in line with the claim made by the counsel for the Attorney 258 General. I shall, however, overrule the objections and receive the proof in order that the court reviewing my decision may have it on the record.

Mr. Neumann: Exception.

Mr. Ransom: What is the figure?

A. \$55,000.

The Master: For which piece is that?

The Witness: That is for both parcels.

Mr. Ransom: That is all.

The Master: Cross examine.

Mr. Chambers: What did you say—cross?

The Master: Yes.

Cross-examination.

By Mr. Chambers:

Q. Do you know what this property cost, upon which you have placed a value as of April 2, 1920, of \$55,000?

A. No, sir; I do not. Mr. Chambers.

Q. You do not?

A. I do not.

Q. You are satisfied that it was a sum way down below or less than that you have given?

Mr. Ransom: Objected to as incompetent and an improper question. He has not said he was satisfied—has not said anything about it.

Mr. Chambers: I am asking him.

The Master: I will allow it. I take a question of that kind to mean, Do you believe it, or Do you think so.

Mr. Ransom: As of what time?

Q. Do you believe it was less than \$55,000.

A. Do you mean to say when the gas company was first started?

259 Q. The Master: When it was bought by the gas company.

Q. Do you know when the gas company brought it?

A. I don't know; about forty or fifty years ago.

By the Master:

Q. Do you know anything about it?

A. No.

Q. Then tell him so.

A. I do not know when the land was bought.

By Mr. Chambers:

Q. When did you first know anything about the prices in Flushing?

A. About fifteen years ago, I should say.

Q. What was the value of it fifteen years ago when you say \$55,000 is the value of it now?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial; and the value at that time has nothing to do with the issues here.

The Master: I will sustain that. I am inclined to agree with you, Mr. Chambers, that it was the cost of the property; at any rate its average value prior to the war. I will let you ask the witness what has been the trend of prices in Flushing, and develop that point.

Mr. Chambers: Yes.

Q. Confining yourself to land now—

By the Master:

Q. Confining yourself to this land, has there been an up trend or down trend in the last five years?

A. Well, I should say in the last years there has been no material movement in land. There has been a boom in dwellings.

260 But in land I should say it is approximately what it was five years ago.

Q. In other words, you think that this price of \$55,000 is about what it was worth in 1914?

A. Exactly.

Q. In 1912?

A. 1912.

Q. 1910?

A. Yes, I should say there has been no material change in ten years.

Q. Well, since along about 1907 or 1908 there has been no change over there?

A. That would be what, ten years ago?

Q. Yes, ten or twelve years ago.

A. No, there has been no substantial change.

Q. The boom over there was in 1907 or 1908?

A. 1905 to 1907.

Q. Since that time it has been rather dormant?

A. Yes.

Q. And has been where it was ten or twelve years ago?

A. Just about.

By Mr. Chambers:

Q. Did you say you were a Tax Commissioner or Deputy Tax Commissioner?

A. A Tax Commissioner.

Q. A deputy?

A. A Tax Commissioner.

Q. Did you value or appraise any land for taxation?

A. No.

Q. Did you review assessments?

A. Yes, sir.

Q. Did you review an assessment on this very piece, ever?

261 A. I do not recall ever having passed on an application for a reduction of this property.

Q. I did not ask you that; I meant did you pass on the valuation of this piece, put on it by a deputy?

A. No, sir; I never did that.

Q. Don't you know what it was assessed for in any year?

A. No, I do not know that I do.

Q. It was never assessed for \$55,000, was it, ever?

A. I would not say. I would not say offhand whether it was or not.

Q. You do not know anything about it?

A. I do not recall anything about it. I would know all about it if I had the records before me, or something I could refresh my memory from.

Q. What did you base your value of \$55,000 on?

A. On the sale price of the adjoining lands.

Q. What adjoining lands were sold; tell us?

A. I will give you a few of them here. A lot 25 by 100 on the north side of Myrtle Avenue, 125 feet west of the railroad, 2,500 square feet, sold for \$1,000 ten years ago by Lawrence B. Halloran

Q. How many square feet were in that?

A. 2,500 square feet. It is a lot 25 by 100.

Q. Where is that relative to this particular piece?

A. It is about—well, about 300 feet west of the corner of this property, and formed by the corner of Myrtle Avenue and Byrd's Alley.

Q. Where did you get your date for that sale from?

A. My brother Lawrence B. Halleran sold it to the purchaser, Mary Foley, ten years ago.

262 Q. And you used that as one of the factors?

A. That is one element.

Q. Yes, and any other?

A. The south side of Myrtle Avenue, 75 feet west of Linden Avenue, a plot 50 by 125, two lots, \$2,000, Betts Estate, for the Borden Condensed Milk Company, sale made in January, 1920.

Q. How many square feet in that piece?

A. That piece would have about—50 by 100, that would have about—

The Master: By 125.

Mr. Neumann: 50 by 125.

The Witness: The first one would have 25 by 100.

Q. The first one that you spoke of?

A. Yes, sir.

Q. What frontage was there; what are the factors and how much would that be a front foot?

A. That would be at the rate of \$40 a front foot, or 40 cents a square foot.

Q. Where on this map, Exhibit 47 for Identification, is that property?

A. I will show you it right here (producing map).

Q. You have another map, have you?

A. I have a map here that we use in the office and a reference here probably may help you. This first lot that I testified to is located right here; call it A, if you please. That is 25 by 100. Here is the Gas Company (indicating).

Q. All right; now your second piece.

A. The second piece is on the south side of Myrtle Avenue, west of Linden Avenue. That is over here (indicating). Call that B.

Q. How much a front foot was that?

263 A. That is 50 by 125 feet, and that sold for \$2,000. That would be something less than 40 cents a square foot.

Q. Those sales relate to the land only?

A. That is land only. That sale was made in January, 1920.

The Master: At what rate did you figure the land per square foot?

The Witness: I figured this property of the New York & Queens Gas Company about 50 cents a square foot, making no allowance for plottage. In other words, I figured this entire block bounded by these four streets at 50 cents a square foot and \$750 for each of the four corners, the corner influence applying to the entire property. In other words, the difference between this tract at 50 cents and this other at 40 cents—

Q. This last tract you put at 40 cents?

A. A little less than 40, Mr. Chambers, for the reason that it is a hundred feet in depth, but the additional depth here, that is to say 25 feet—that additional rear footage there of 25 feet would not be of any particular consequence.

Q. All right, go ahead.

A. The south side of Myrtle Avenue, 150 feet west of Farrington Street, a lot 25 by 100 with a small five-room shack. That would be right here (indicating on map).

Q. That is across the road?

A. Yes. Call that C, if you please.

Q. Across the street from the gas company?

A. Well, now, that was a contract between the Flushing Realty & Construction Company and Rocco R. Martino for \$1,800. This is 25 by 100.

264 Q. That would be how much per front foot?

A. Figuring the land at \$1,000 and the building at \$800, that would be 40 cents a square foot, or \$40 per running foot.

Q. They all seem to run about 10 cents a square foot less than this?

A. Yes, they do. The north side of Center Street, 100 feet west of Farrington Avenue; I will call that D, if you please.

Q. How big a piece?

A. That is 50 by 100, Mary Powers.

Q. For how much?

A. \$2,600. It is improved with a small two-story dwelling.

Q. How much is that a front foot?

A. 40 cents a square foot. It is a little more than 40 cents, figuring the building.

Q. Forty cents a front foot?

A. No, a square foot. The total purchase price is \$2,600.

Q. Building and all?

A. That is 50 feet of land and a small two-story building.

Q. How much a front foot, 40 cents?

The Master: No, \$40 a front foot, and 40 cents a square foot on area.

A. I estimate the land under this building to be worth 40 cents a square foot.

Q. It is still running 40 cents.

A. Yes. That is the standard price out there.

Q. Why didn't you put that standard price on the gas company's property?

A. Do you want to know?

The Master: Let me have Mr. Halloran's answer to that, will you?

When you worked out the other sales and transactions referred 265 to, running 40 cents a square foot, let us have on the record why you made this piece you appraised 50 cents?

The Witness: The reason for the difference in that is that this property is one intact square block not intersected by any streets,

and also is in proximity to the railroad siding here, which gives it a right of railroad connection, and also it is located in the unrestricted district under the new zoning law of the City of New York, which in my opinion adds more than 10 cents to the value per square foot.

Q. So are these others in the unrestricted district, are they not?

A. Yes, but they are individual lots, Mr. Chambers.

Q. You did not add anything for plottage to that parcel the gas company handed you to appraise?

A. I included it at 50 cents a square foot; including plottage.

Q. How much would that gas company's property, as they gave you the description of it, be worth at 40 cents instead of 50?

A. It would be worth 10 cents a square foot less. I have not figured it; I should say in round figures \$10,000 less.

Q. About \$15,000 then?

A. Yes. I estimate there are 105,000 square feet in it.

Q. That would not be a bad idea, would it, to make that \$45,000?

A. I consider this property worth 50 cents a square foot.

266 Q. I know you did at first; but looking at it in the light

of these four pieces of property all around it, and it is all in the unrestricted zone, if somebody came along and said \$45,000 you would not say he was very much off, would you?

A. Yes, I would, because—

Q. You would say—

Mr. Ransom: Let him finish his answer.

Q. You would say he was off?

A. I would say he was off because he was not giving due consideration to the fact that this property is all in one square block. These prices I have given you, it seems to me, would more than sustain this 50 cents a square foot, because if the individual lots are worth 40 cents, lots in one block would be worth more than 40 cents a square foot or more than 50 cents a square foot.

By the Master:

Q. Putting it another way, Commissioner, if you were to figure them all at 40 cents you would add the difference for plottage?

A. Yes, sir. Instead of wrangling about the plottage charge I put it at 50 cents a square foot for lots within that block, of the company.

Q. If you took \$45,000 as the basis of individual lots, adding something to the corner and adding 20 per cent for plottage, you would get the same result?

A. Practically.

Q. Would 20 per cent be high or low for plottage?

A. 20 per cent for plottage in a case of that kind, in an unrestricted district used for that particular purpose, would be low, because the amount of property that could be used for unrestricted uses is very limited.

267 Q. Around that section?

A. All over Greater New York, since the passage of the Building Law.

By Mr. Chambers:

Q. Have you got any others there that run any different than those four you gave me?

A. No, I would say they are right in the immediate vicinity.

Q. You picked out those four?

A. Picked out those four because we have actually sold them and know all about them.

Q. It is fair to assume if there are any others you would probably have told us or would have them?

A. Exactly.

The Master: In other words, those four sales were the only ones you knew of around that immediate section?

The Witness: Exactly.

Q. Property is kind of dead around there, I take it?

A. Well, the sale of vacant land is not very brisk, anyway, just now.

Q. And that has something to do with the market price of this piece of property, too?

The Master: It has not put it up any.

A. Vacant property you can make less use of than land with a building, because of the cost of materials.

Q. What about that alley, does that run right through the plant?

A. It is the westerly boundary of the company's property, running from Myrtle Avenue to Center Street.

Q. I mean none of it is on the other side of the alley?

268 Q. None of it is on the other side.

Q. There is no street or alley running through it?

A. No, sir.

Q. Of any kind. It is in kind of a queer shape here according to this map I have got.

A. Well, that is apt to happen to property, you know.

Q. Your map does not show anything that looks like this.

A. Yes, it does; on a little enlarged scale (indicating on map).

Q. You have a street, then, running right through it; your piece is not all one piece, you have Center Street running right through it?

A. I am testifying to two parcels of property, one of which is this one, and one here the other (indicating).

Q. I know, but you run them all in together at \$55,000 with the plottage. You have two pieces of property that are separated by streets.

Mr. Ransom: I do not think we better try to fight out that question as to whether there is or is not a street there.

Mr. Neumann: Yes, but you have not yet proved where your property is, or what it is.

Q. Is it not a fact that in the piece they gave you Center Street runs right through and segregates the one from the other?

A. Well, that property is fenced in from here to there (indicating).

Q. On this map you have got Center Street segregating these two pieces of property?

A. Well, I tell you, I would not testify to the truthfulness of this map in the sense that—

Q. I am not asking you that.

269 Mr. Ransom: Let him finish his answer.

A. I mean by that, this we use only as a picture map.

Q. Did you assume that there was no street in there, Center Street?

A. No.

Q. You assumed this company owned, or these figures that were given you covered the whole property joined together?

A. Oh, no, I am very clear and distinct on that, Mr. Chambers. Here is one parcel on the north side of Center Street (indicating). The number of square feet in both these parcels is 105,000 square feet, figured at 50 cents a square foot.

Q. How much did you figure that little thing at (indicating)?

A. Fifty cents a square foot.

Q. How do you explain that to the Master, that little piece, in comparison with these other pieces? By that little piece I mean the piece north of Center Street, 100 by 125.85?

A. Because it is used in connection with that plant.

Q. I know, but it is separated by a street.

Mr. Ransom: No, it is fenced in.

Mr. Chambers: Will you keep quiet for a minute?

The Master: It does not make any difference; he has appraised two separate parcels here.

Q. Can you offer any explanation for that small piece I have just described by dimensions—why that is not in the same situation as these other three little pieces you have spoken of?

270 Mr. Ransom: Objected to. If counsel will read the deed, of which we sent him copies, he will find out why.

The Master: Objection overruled.

A. What explanation do you mean, Mr. Chambers?

The Master: Why didn't you figure that at 40 cents rather than 50; it is a small parcel?

The Witness: The reason I did that is it is used in connection with the plant, it is 100 by 125.

Q. That is the only reason?

A. For the same reason. Those other parcels I have given you, none of them is more than 50 feet.

Q. How much plottage did you allow for that piece?

A. No plottage.

Q. What value would you put on that little piece 100 by 125.85 if it was owned by somebody else?

A. I would not change the value at all.

Q. Even though a third person owned it?

A. No, sir; it would not make any difference.

Q. Then if somebody else owned it and the gas company did not, how do you reconcile that with your testimony a minute ago?

A. Because the other parcels are individual parcels.

Q. This will be then.

The Master: It will be five lots together.

A. Just a moment. Individual parcels, not more than 50 feet front, while this parcel has 125 feet front, as against 5,000 square feet in one parcel.

271 Q. If an individual owned that would you allow anything for plottage on the small piece north of Center Street?

A. I might if it was used for garage purposes or some such purpose.

By the Master:

Q. You would not if you took it in at 50 cents?

A. No.

Q. You have included plottage in the rate of 50 cents?

A. Per square foot.

By Mr. Chambers:

Q. Would you allow plottage in that?

A. Not at 50 cents.

The Master: At what price?

Q. Not at 50 cents you would not?

A. No.

Q. Would you at 40 cents?

A. Yes, I think I would.

Q. How much?

A. Well, probably 25 per cent, if it was all improved under one roof and used for one particular purpose.

Q. Do you always allow plottage for every plot that is over 50 feet?

A. Well, it depends entirely on the location. You might apply plottage to a 50 foot plot on a prominent street, or you might—I should say you could not apply plottage out there until you got beyond 50 feet.

Q. One of these parcels you spoke of is right adjoining that, fronting on Center Street, adjoining that to the east, is it not?

A. That is right.

Q. Just a few feet away?

272 A. Yes, sir. That is a 50 foot plot improved with a small frame house, just sold for \$2,600.

Q. Did your company loan any money on this gas company property?

A. No, sir; we do not loan on gas—

Q. You do not loan on that kind of property?

A. No, we do not have money enough.

Q. Is that a street there, that Center Street?

Mr. Ransom: Objected to as incompetent. The witness is not competent to tell whether it is. The deeds are in evidence.

A. It is a paper street.

Q. How did it look?

A. What do you mean, how did it look?

Q. Does it look like a street?

The Master: Do you know that section?

Mr. Chambers: No.

The Master: Well, very often you cannot tell whether it is a street except by looking at a map.

A. I think the best you can say is, it is a paper street.

Mr. Ransom: It is on the map, fenced in and used all the while.

Q. You treated it as a street when you testified about this other parcel, did you? Did you treat it as a street?

The Master: I will not allow the question, because it has been thoroughly covered. He has indicated he valued two separate parcels, one bounded by Center Street, Byrd's Alley, Farrington Street and Myrtle Avenue, and the other one lying on the north side of Center Street. We have had enough of it.

Mr. Ransom: He took into account that they were contiguous and used together.

273 Mr. Neumann: Why not let the witness say what he did?

Q. Have you been retained by the Consolidated?

The Master: Yes, the witness is retained by the Consolidated Gas Company, employed and paid by them. He is a hired expert.

Q. Were you retained by the Consolidated?

A. I was retained by Mr. Spear of the New York & Queens Gas Company.

The Master: And you are going to be paid for your testimony?

The Witness: Yes, sir.

Mr. Chambers: That's good. I hope so.

Mr. Ransom: Well, we hope to be able to pay him.

The Master: That is a perfect waste of time, to ask a man who has no interest in a litigation whether he is being paid for it.

Mr. Chambers: Well, I disagree with you.

Exception.

Cross-examination.

By Mr. Neumann:

Q. Are you employed by the company in any way, or interested as a stockholder?

A. No.

Q. Do you know of any sales involving a whole block of property that have taken place within the last ten years within the radius of this property you have testified to?

A. Yes, sir.

Q. What block was that?

A. The block bought by the Ranier Motor Company.

Q. When?

A. That was an acreage tract and contained about four and one-half acres and about—oh, it was seven or eight years ago, I should say.

274 Q. Is that more or less than in this particular parcel you testified to?

A. I should say that would be more.

The Master: It is a good deal more.

The Witness: Yes.

Mr. Ransom: It is down on the Meadows.

The Master: A good deal more.

The Witness: That is four and a half acres, and 42,000 square feet, that would be about two and a half acres, as against about four and a half.

The Master: About twice as big a plot.

The Witness: Yes.

Q. What price was paid?

A. This property——

Q. I mean do you know what price was paid?

A. I know because I made the sale. This property was sold at the rate of about \$500 a lot.

Q. Figured on the square foot and square inch basis, how much would that be?

A. Per what, per acre?

The Master: Per square foot.

Q. Per square foot.

A. That would be at the rate of 20 cents a square foot.

Q. \$20 a square foot?

A. No, 20 cents a square foot.

Q. And \$20——

A. A running foot.

Q. That is it.

A. Now you want me to describe the kind of property this is?

Q. No, I do not want anything more than I have asked you, for the present.

The Master: The Master does.

275 By the Master:

Q. Tell us what kind of property this was.

A. The difference in this property is that this property is meadow land, and when it was sold at that time it was sold in its raw virgin condition. Since that time it has been filled and a railroad siding has been built to it.

Q. What kind of property is this that the gas company is on?

A. It is filled property with improved streets, macadam roads around it, curbed and sidewalked, and to that extent it is different from this property, which was meadow land.

Q. Was it on grade or below grade?

A. Below grade.

By Mr. Neumann:

Q. I understand you to say you did not know what the price was that the company originally paid for this property?

A. That is true.

Q. Will you tell us just what factors you took into consideration in arriving at your value?

The Master: Well, I do not understand that, Mr. Neumann. I thought he told us how he arrived at his value.

Mr. Neumann: I do not think he has just yet.

The Master: What do you want to know especially?

Mr. Neumann: I want to know what he took into consideration in arriving at this value.

The Master: Do you want him to repeat all he said before?

Mr. Neumann: No. I think that is a perfectly plain question. When a man values a piece of property he takes into consideration the sales of other properties, the leases of other properties.

The Master: He has told us that.

Mr. Neumann: No, he has not; he has told us about sales only. I want to know what are all the factors he took into consideration in valuing this property.

Mr. Ransom: I object to its as fully covered.

The Master: I think the witness has fully covered it. If there is any particular factor you want to call his attention to, you may do it.

Mr. Neumann: May I have an exception?

The Master: Certainly.

Q. Did you look up the assessed value of this property?

A. No, sir.

Mr. Ransom: Objected to as fully covered.

The Master: He has already covered that. He said he had not.

Cross-examination.

By Mr. Hyatt:

Q. I would like to ask you whether this is a residential or business neighborhood?

A. I have testified, Mr. Hyatt, it is in the unrestricted district under the new zoning law.

Q. Are there any residences there at all?

A. A few workmen's residences scattered here and there.

Q. What is the character of the buildings where the workmen reside?

A. Frame.

277 The Master: I get the impression of pretty old ramshackle things around there.

The Witness: Yes, sir.

Q. In what state of repair are they?

Mr. Ransom: Objected to as immaterial.

A. Why, some of them are in a poor state of repair.

Q. Have you seen them for a long time?

A. Yes.

Q. How long have they been in that state of repair?

The Master: What is the point of this, Mr. Hyatt?

Mr. Hyatt: Why, the general character of the neighborhood. You know that determines the value of the property as well as other factors.

The Master: What condition the dwellings are in?

Mr. Hyatt: Yes, sir. Am I allowed to have the question answered?

The Master: Yes.

A. There are no new dwellings being erected in this locality for residential purposes. The reason for that is that the land having been zoned for unrestricted uses is more valuable for manufacturing purposes than it would be for dwelling house uses or dwelling house purposes, and any of the dwellings that are there have been there for a number of years and are to some extent out of repair.

Q. And is the locality also devoted to business purposes?

A. No, there is no—there is no business in that particular locality.

There is nothing there to support it.

278 Q. How many feet above sea level, about, is it at the present time?

A. Why, I suppose it is about, offhand, between seven and ten feet, I suppose, above high water mark in Flushing Creek.

Q. Do you know who filled in this land?

A. Do I know who filled it in?

Q. Yes.

A. I should say the gas company filled in a part of it.

Q. Do you know? I asked you if you knew.

A. No, I would not like to say that.

Q. Would it be suitable for any purpose other than that which it is used for now?

A. Any other manufacturing purpose.

Q. Is the atmosphere in a noisome condition at times?

A. I would not like to pass on that. My nose—

Q. Well, that is a matter of fact that you could determine from ordinary observation.

The Master: What do you mean, due to the gas company's works?

Mr. Hyatt: Yes, in the vicinity of the gas works.

A. I never noticed that there was anything particularly offensive about it. I have lived right around there for a number of years.

Q. Do you know of any property sold there in the last ten years for thirty cents per square foot?

A. No, I do not.

Q. Any at thirty-five cents a square foot?

The Master: One minute now. Do you, Mr. Hyatt?

Mr. Hyatt: Yes.

The Master: All right, then; answer the question.

279 A. No, I do not offhand.

Q. Would you know as a matter of fact if such property had been sold for thirty-five cents a square foot?

A. It might have gotten by me without knowing it.

Q. How far back did you look in your investigation?

A. We went over the records of our office; I went over the records with my brother—well, back ten years, back to that Foley sale.

Q. Does your office keep a record of all the transfers, sales and rentals for the last ten years?

A. Not in that form. We keep them marked on Hyde's Atlas and also Bromley's Atlas.

Q. Do you keep this record yourself?

A. Personally?

Q. Yes.

A. No, it is done by one of the clerks in the office.

Q. Do you know that he does accurate work?

A. I have never caught him in very many mistakes.

Mr. Hyatt: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. Halleran, at the time this Ranier Motor Company plot was bought on the meadows was there any improved street leading to it?

A. No, it was virgin land.

Q. This Ranier Motor Company plot on the meadows was adjacent to water, adjacent to the creek?

A. It fronts on so-called Mill Creek. Mill Creek is not navigable and it is a tidal creek.

280 Q. Was the general character of the plot bought by the Motor Company marshy?

A. Marshy and swampy, and required piling for the buildings, and filling and all that sort of thing.

Mr. Hyatt: I move to strike that out, that it required piling and filling for the building.

The Master: Motion denied.

Mr. Hyatt: Exception.

Q. Have you ever had occasion to investigate or ascertain in connection with building operations the approximate depth of the mud in that location?

A. I know something about it in connection with the Ranier Motor Corporation, for the reason that I represented the people who had the second mortgage, and when the land was sold it was sold without any money having changed hands, and the purchasers taking a second mortgage for the land; and I happen to know at that time the piles that were driven under the building were driven from twenty to thirty-five feet into the mud before they were fethched up.

Q. The New York & Queens Gas Company property is not in that marsh or meadow region?

A. No, sir.

Q. That is on firmer ground?

A. It is on upland whereas this is just on the edge of the upland.

Mr. Ransom: That is all.

The Master: That is all, Mr. Halloran.

Mr. Ransom: Before taking up the examination of Mr. Addicks, I offer in evidence Complainant's Exhibit 53 for Identification, and state my intention to offer in evidence the other books of account hitherto marked for identification for the years 1919, 281 and 1920 to date.

Mr. Neumann: I object to this upon the following grounds: It is immaterial, irrelevant and incompetent; it is not shown to be a book of original entry; it has not been properly proved; not properly proved to have been kept in the regular course of business; the underlying data upon which this book is based has not been produced in evidence.

I object on the ground that the defendants will be deprived of their opportunity of cross examining the witness who made the entries in the books, prior to the introduction of the books in evidence. Upon the ground that the books have not been proved to be truly and correctly kept. Upon the ground that the entries therein contained, purporting to be merchandise sold and delivered to this complainant company have not been properly proven and are not properly provable in this way. Upon the ground that the books are not proved to have been kept in accordance with the Uniform System of Accounts as set forth pursuant to and in accordance with the order of the Public Service Commission for the First District, and on the ground that they are self-serving declarations.

The Master: The objections are overruled.

Mr. Chambers: Exception.

Mr. Hyatt: The District Attorney of Queens County joins in the objection.

Mr. Chambers: I join in the objection.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Mr. Ransom: Then the Journal, now Complainant's Exhibit 53 for Identification, becomes Complainant's Exhibit 53.

282 Marked Complainant's Exhibit 53 in evidence.

Mr. Ransom: The Operating Expense Ledger which is now Complainant's Exhibit 54 for Identification, I offer that in evidence.

Mr. Neumann: Same objections.

The Master: Same ruling.

Mr. Hyatt: Same objection.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 54 in evidence.

Mr. Ransom: I offer the Accounts Payable Ledger No. 4 which is now Complainant's Exhibit 55 for Identification.

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 55 in evidence.

Mr. Ransom: The General Cash Book No. 3 which is now Complainant's Exhibit 56 for Identification I offer.

Mr. Neumann: Same objection.

Mr. Hyatt: Same objection.

The Master: Same ruling.

Mr. Hyatt: Same exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 56 in evidence.

Mr. Ransom: And the General Ledger No. 4, which is now Complainant's Exhibit 52 for Identification.

Mr. Neumann: Same objection.

Mr. Hyatt: Same objection.

The Master: Same ruling.

Mr. Hyatt: Exception.

Marked Complainant's Exhibit 52 in evidence.

283 Mr. Neumann: May I add one objection to those, which I have not already enumerated, that a part of a year is not a basis on which the Master can make any findings, and that the books are therefore objectionable upon the further ground that they only contain part of a year.

WALTER R. ADDICKS, called as a witness in behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Where do you reside, Mr. Addicks?

A. Mount Kisco, Westchester County, New York.

Q. What is your connection with the Consolidated Gas Company?

A. Vice-President.

Q. How long have you been connected with the Consolidated Gas Company?

A. From March, 1903.

Q. What other official positions have you had with that company?

A. I am a trustee of the company.

Q. What is your relation to the executive committee?

A. I act as secretary of the executive committee and technical adviser to the president and executive committee.

Q. You personally keep the minutes of the executive committee?

A. I do.

Q. And have during what time?

284 Q. A. Well, regularly for probably two years, about 1905 and 1906, somewhere about that time, and up to the present time, except when I was out of the City.

Q. Are you an engineer?

A. I am.

Q. What has been your academic and technical education?

A. I was educated at the Episcopal Academy in Philadelphia and then entered the United States Naval Academy, Class of 1882 Engineer Corps.

Q. When were you graduated from the United States Naval Academy?

A. June, 1882.

Q. What have been your occupations and experience since graduation from the Naval Academy?

A. After leaving the Naval Academy I went with the Pennsylvania Railroad for about four years, in their motive power department, during which time I was in the drafting department in connection with plans in connection with locomotives and cars, and I acted as inspector in connection with various work in the Altoona shops. I surveyed all the shops and shop yards of the Pennsylvania System east of Pittsburgh and Erie. After that I left the Pennsylvania Railroad and went as engineer for the Beacon Construction Company of Boston, erecting the plant of the Bay State Gas Company of Boston.

Q. That is, you were engineer to this company which constructed the works and plant of the Bay State Gas Company of Massachusetts?

A. Yes, sir.

285 Q. Then what did you do?

A. I became engineer of distribution of the Boston Gas Company.

Q. Before that did you work in Chicago for a while?

A. During a certain period while I was in Boston, during the winter. When building operations were suspended, I went to Chicago and worked in the Consumers Gas Works, doing all the work that the men in the gas works did, making gas, cleaning purifiers, and work of that nature.

Q. What other companies in that region, in the Boston, Massachusetts, region, did you become engineer for, or consulting engineer?

A. After being in charge of distribution I then succeeded to superintendent of the North End Gas Works, which was the largest gas works in New England, coal gas and some water gas. Later it was altered and for a time was exclusively water gas, although they continued to maintain the coal gas retorts. I became engineer of the South Boston Gas Company, or the Dorchester Gas Company, of the Roxbury Gas Company and of the Brookline Gas Company, and I was consulting engineer for the Massachusetts Pipe Line Company, and in some respects in connection with the New England Gas & Coke Company, which was a coke oven plant. I then became chief engineer of all the companies I have mentioned.

Q. The Boston Gas Light Company?

A. The Boston and affiliated companies, but not of the Pipe Line Company or of the Coke Company.

Q. Were you engineer of distribution of the Boston Com-
286 pany?

A. I mentioned that.

Q. What would you say as to the size of the Boston Gas Light Company? Was it the largest in New England?

A. Yes, sir; the largest plant, and they had the largest output of any New England company.

Q. Would it be true to say that you have worked in practically every department of gas operation except the treasurer's office?

A. Yes. I have been paymaster and paid the men, and did all the work in connection with the actual manufacture, bought materials and constructed plants, constructed them from the foundation up in connection with the Bay State Gas Company.

Q. Laid distributing facilities?

A. Beg pardon.

Q. Laid distributing facilities?

A. I laid pipes, yes, sir. I acted as superintendent.

Q. And you purchased materials and employed labor in both construction and operation?

A. Yes, sir.

Q. Of gas plants?

A. Yes.

Q. What generally have been your duties and functions in connection with the business, operation and property of the Consolidated Gas Company?

A. Well, all the duties that devolved upon me and any matters brought before the Executive Committee. I had to familiarize myself with all questions of new construction and expenditures of larger moment, and contracts for oil and coal and so forth.

287 Q. Have you for a number of years had in charge the purchase of oil for the Consolidated Gas Company?

A. I have.

Q. Have you also in charge the purchase of coal for the Consolidated Gas Company?

A. I have.

Q. Has it been the practice of the Consolidated Gas Company to purchase its gas oil at irregular times and in quantities limited to its immediate requirements, or to purchase oil on contracts extending over periods?

Mr. Hyatt: I object to that as immaterial.

Mr. Neumann: It is incompetent, irrelevant and immaterial how the Consolidated bought it. The question is how this company bought it.

The Master: I think I understand the purpose of the question. I will allow it.

Mr. Neumann: Exception.

A. It has been the custom of the company to purchase its oil under a contract for a period of time.

Mr. Neumann: I move to strike the witness' answer out.

Mr. Hyatt: It calls for a conclusion, too.

The Master: Denied.

Mr. Neumann: Exception.

Q. Does the company make contracts for deliveries over a stipulated period at a stipulated price?

A. Yes, sir.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

288 Q. Have you personally negotiated agreements with the Consolidated Gas Company during your connection with the company, on practically that time?

A. Substantially so. I think the first year I may not have done it.

Q. Were the results of your negotiations submitted for the approval of the Executive Committee?

Mr. Neumann: Whether the Consolidated Executive Committee approved his action is of no particular concern to the New York & Queens at this time.

Mr. Ransom: It is part of his knowledge.

The Master: I will overrule that.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

A. Yes.

Q. Have your negotiations for the purchase of oil for the Consolidated embraced also the oil requirements of certain gas companies affiliated with the Consolidated Gas Company?

The Master: Including the New York & Queens.

Mr. Ransom: Including the New York & Queens?

Mr. Hyatt: I object to the form of that question, and no foundation has been laid for it.

Mr. Neumann: I object.

The Master: Objections overruled.

Mr. Hyatt: The word "affiliations" is objectionable.

The Master: The question is did your oil contracts include the New York & Queens requirements?

289 The Witness: Not all, but latterly.

Q. Since about what time?

A. I would not like to state definitely, but I think 1913 or 1914 or 1915 somewhere, or around those years.

Q. As to coal, have all purchasers of coal during 1919 and 1920 and theretofore been submitted by you for the consideration of the Executive Committee?

Mr. Neumann: One moment. I object to that on the ground it is incompetent, irrelevant and immaterial.

The Master: I will sustain that objection.

Q. Does the Consolidated Gas Company also purchase anthracite generator coal for the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it.

The Master: Overruled.

Mr. Neumann: Exception.

A. They do.

Q. And are there any of the contracts of the Consolidated Gas Company for anthracite generator coal submitted by you to the Executive Committee of the Consolidated Gas Company?

Mr. Hyatt: That is objected to as incompetent, irrelevant and immaterial.

The Master: It cannot do any harm. Overruled.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

A. Yes, sir.

Q. Referring now to the oil used during the year 1919, did you negotiate the contract for such oil for the Consolidated Gas 290 Company and certain of its affiliated companies, including the New York & Queens Gas Company?

Mr. Hyatt: I object to that word "affiliated," your Honor.

Mr. Neumann: I move to strike out from that question the words "and certain of its affiliated companies," and confine it to the Consolidated and the New York & Queens.

The Master: Overruled.

Mr. Hyatt: I object to the characterization anyway. Exception.

Mr. Neumann: Exception.

A. I did.

Q. Was there a contract made with any company for the supply of gas oil during 1919?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. There was.

Q. With what company?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. The Standard Oil Company of New Jersey.

Q. Have you that contract here, produced from the files of the company?

A. Yes, sir, I have.

Q. As negotiated by you?

A. Yes, sir (producing paper).

Q. This is the original contract?

A. It is.

Q. Signed by you in behalf of the Consolidated Gas Company?

A. Yes, sir.

291 Q. Attested by Mr. Brundage as secretary?

A. Yes, sir.

Q. Do you know the signature of Mr. Brundage?

A. Yes, sir.

Q. And this is the contract under which oil was received during 1919?

A. That is for a portion of 1919.

Q. During a part of it.

A. Yes.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: Why is it incompetent, and why is it irrelevant, and why is it immaterial?

Mr. Hyatt: What does it tend to prove?

The Master: What?

Mr. Hyatt: I do not know what it tends to prove at the present juncture of affairs.

The Master: It probably tends to prove what they paid for oil. And I have heard this immaterial, irrelevant, incompetent thing all afternoon. Let us hear why this is incompetent, irrelevant and immaterial.

Mr. Neumann: Well, I took it, your Honor, from what you said, that you did not want us to elaborate on the objections.

The Master: I asked once or twice that you elaborate and nobody

seems to know why objections are put in, and I will ask you again why is it put in to this paper; what is wrong about it?

Mr. Chambers: Why, they have not proved the paper, for one thing.

292 The Master: The witness has sworn it was a contract between his company and the Standard Oil Company of New Jersey.

Mr. Chambers: He swears to his signature and Mr. Brundage's for the Consolidated.

Mr. Neumann: Can they prove the signature of one party to a contract?

The Master: The witness swears that is the contract under which they operate.

Mr. Neumann: Your Honor will recall in the Consolidated case we were compelled to prove the signatures of both buyer and seller before they were allowed to go into evidence.

The Master: I am not trying the Consolidated case now.

Mr. Hyatt: It is a very extraordinary way of offering proof here, your Honor; it is not connected up with any particular fact under discussion for any period of time prior to offering the instrument. I do not know what it tends to prove.

The Master: Well, look at it, maybe you will know when you look at it.

Mr. Hyatt: It may have something in it that has already been connected up or may not. I cannot tell and nobody can tell unless they were very familiar with the record. The proof here is all fragmentary, anyway, you will have to take judicial notice of a great many things.

The Master: For instance?

Mr. Hyatt: This matter of affiliations. I do not know about the—

The Master: Who has asked me to take judicial notice of that?

293 Mr. Hyatt: I do not say that, but their use of the word "affiliated" is highly objectionable.

The Master: We are paying no attention to any other company but the New York & Queens.

Mr. Hyatt: Why is the word "affiliated" used, then?

The Master: I do not know. It is perfectly useless to me, but I do not see as it does a lot of harm. Call it "married," for all I care.

By the Master:

Q. While counsel is looking at that paper, Mr. Addicks, was any consideration given by you to the price or other terms at which you obligated your company before you signed that contract?

A. Yes.

Q. Tell us what you did or knew or thought with reference to the obligation as to the price, the time of delivery and other terms, as indicating the reasonableness of that contract or the unreasonableness of it?

A. I asked for prices of oil from other companies before that contract was made.

Q. Have you made any study of oil conditions, where you could get oil, or did you know anything about it other than the mere signing up of the contract?

A. Yes, sir.

Q. Tell us what you knew about it so that I can tell whether this price is reasonable or a price that came out of the air.

A. Well, I have kept myself informed about oil for a great many years, as to the prices of oil.

294 Q. As to where you can get it?

A. Yes, sir, and during the period in which this oil was purchased for the New York & Queens Gas Company particularly.

Q. Did you give any consideration to the sources of supply, and who had the quantities, or anything of that sort?

A. Yes, sir, and as to their ability to supply our needs. I knew of the principal companies that were supplying this vicinity, and I inquired of all the companies I felt could supply us their price and deliveries for oil during the period in question.

Q. Did you know what crude oil was selling for?

A. I did at the time, yes, sir, and I kept a careful record of what the price of crude oil was and what the price of the type of oil known as Standard White was, which is an oil largely shipped for export, used for illuminating purposes on the other side, and kept track of the trend up and down at all times, took particular note of it at the time we were considering a contract.

The Master: Any other specific grounds of objection to this paper that is offered?

Mr. Neumann: I have none other than I have already urged for the record.

The Master: Anything more that you want to state on the record, Mr. Hyatt?

Mr. Hyatt: No, I have stated all I have.

The Master: The objections are overruled.

Mr. Hyatt: I suggest the counsel for complainant state what he offers it to prove. I think a blanket offer of that kind, of an instrument of that sort, is highly objectionable unless it tends to 295 prove some definite thing that is already on the record or he wants to put on the record.

The Master: The objections are overruled and exception allowed.

Mr. Hyatt: Exception.

Contract marked Complainant's Exhibit 71.

By Mr. Ransom:

Q. Mr. Addicks, on page 2 of Exhibit 71 is shown a paragraph 4, "New York & Queens Gas Company, Flushing, Long Island, in lots of not less than 2,000 barrels, 7.7472 cents?" Does that have reference to the quantity for the New York & Queens Gas Company?

A. That had reference to the supply of the New York & Queens Gas Company; yes, sir.

Q. And that price of 7.7472 cents is the base price plus the cost of water transportation by tank boats to Flushing?

Mr. Chambers: I object to that. The paper speaks for itself now that it is in.

The Master: Doesn't that appear from the papers?

Q. Is that the case, Mr. Addicks?

A. Yes, sir—

Mr. Neumann: Why, that is objected to.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: Seven and a half cents plus lighterage.

The Master: Why do you say seven and a half? I thought it was 7.7472. That includes lighterage?

The Witness: Yes, sir.

Mr. Hyatt: Your Honor, I object to anything here that tends to have the witness interpret the instrument. The instrument will speak for itself. Your Honor will interpret the instrument.

The Master: In this case I will let Mr. Addicks help me.

Mr. Hyatt: I think it is highly objectionable to let him tell what his interpretation of the instrument is.

Mr. Neumann: I will ask counsel for the complainant if we may have a copy of this exhibit?

Mr. Ransom: Photostat copies of this exhibit were furnished to the defendants in the other case, who are the same as the defendants in this case. I can, if necessary and counsel insists on it have other copies made and furnished.

The Master: I do not see any necessity for it.

Mr. Neumann: I might say this: Colonel Hayward, who was counsel in that case, has those exhibits. I haven't them, and it is a disadvantage to me to say they were introduced in the last case. That does not help me in the trial of this case.

Mr. Ransom: If the exhibits are not turned back to you by Colonel Hayward, I will see that you get copies.

Q. And the contract was made subject to increase or decrease in price according to the increase or decrease in prices during war time?

Mr. Hyatt: I object to that.

The Master: Objection sustained, the contract speaks for itself.

Mr. Ransom: I only wanted to call attention to that phase of the matter.

297 Q. Subsequently, in March, 1919, was this contract of December 18, 1918, modified in any particular?

A. It was modified prior to that, Judge.

Q. What was the first?

A. Under date of January 8th.

Q. 1919?

A. 1919. The Standard Oil Company notified of a change in transportation rates.

The Master: In writing?

The Witness: In writing, effective February 8th, which modified slightly the price of oil, making 7.7833 cents in place of 7.7472. It is very slight.

The Master: Haven't we got that writing here?

The Witness: Yes, sir.

The Master: Let us have it. We better have it on the record.

The Witness: This is it (producing paper).

The Master: Of January 8th?

The Witness: Yes, sir.

Q. This letter from the Standard Oil Company of New Jersey, dated January 16, 1919, addressed to you, is the communication to which you refer?

A. Yes, sir.

The Master: I understand Mr. Addicks to say under date of January 8th. What is the explanation of that variance in dates?

Q. Was there an original notification of it on January 8th and then the further details, full details, given on January 16th?

A. There was.

Mr. Neumann: I object on the ground it is immaterial, irrelevant—

298 Q. This document is the letter of January 8th (handing witness)?

A. Let me just glance at it again (examining letter). Yes, sir.

Q. And this letter of January 16th, 1919, referring to the letter of January 8th, gives the details of the change to increased lighterage rate?

A. Yes, sir.

Mr. Ransom: I offer in evidence the letter of January 8th and the letter of January 16th, 1919.

The Master: As one exhibit. The two letters are offered as one exhibit?

Mr. Ransom: Yes.

Mr. Neumann: Before your Honor passes on them, will you give me an opportunity of examining them. (Examines papers.) I make the same objection that I made to the original contract.

Mr. Hyatt: All I have to say is, your Honor, that it is a poor way of proving an increase in lighterage fees.

The Master: Objection overruled.

Mr. Hyatt: If your Honor wants to take it in evidence, especially, I think it is highly improper.

Mr. Ransom: If you want to know why lighterage rates went up, ask the Corporation Counsel.

Letters marked as one exhibit, Complainant's Exhibit 72.

Q. Subsequently to that, Mr. Addicks, was there a modification of the agreement which is Complainant's Exhibit 71 in another respect?

A. There was.

299 Q. In the form of a written agreement?

A. In the form of a written agreement.

Q. And have you produced such written agreement from your files?

A. I have, sir (producing paper).

Q. This is it?

A. It is.

Mr. Chambers: How long are you going to sit today?

The Master: Until about six o'clock.

Mr. Ransom: I offer it in evidence.

The Master: What do you offer in evidence? You better describe it.

Mr. Ransom: The agreement made on the 28th day of March, 1919, between The Standard Oil Company of New Jersey and the Consolidated Gas Company of New York.

Q. This bears the signatures of yourself and the assistant secretary?

A. Mine and Mr. Barnitz's.

Q. Of your company?

A. Yes, sir.

Mr. Hyatt: That is objected to, your Honor. There is no proof on the record that it is binding on this complainant.

Mr. Neumann: In addition to the objections which are urged as against the introduction of the original contract, I specifically object to this upon the ground that what counsel here is evidently intending to do is to impeach his own testimony.

The Master: Objection overruled.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 73.

Q. Mr. Addicks, at any time during 1919, did you take up the matter of obtaining a contract for the delivery of oil for the 300 Consolidated Company, including the New York & Queens Gas Company, for the year 1920?

A. Yes, sir, I asked for prices for oil in a similar way in 1920, and I asked one or two other companies that I added to my list.

Q. And as a result in of your negotiations was a contract made for 1920 oil?

A. Yes, sir.

Q. As to what date?

A. The 4th day of December, 1919.

Q. With whom?

A. With The Standard Oil Company of New Jersey.

Q. And have you produced here the original agreement?

A. Yes, sir.

Q. Bearing the signatures of yourself and Mr. Barnitz in behalf of the Consolidated Gas Company?

A. I remember my own, but I would have to look and see Mr. Barnitz's. (Examines paper.) Yes, sir.

Q. This is the original contract from your files?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Hyatt: Objected to on the ground that it is not shown to be building on the complainant company.

Mr. Neumann: I object to this contract upon the grounds heretofore urged as against the first contract, and the additional ground that this contract has a paper attached to it that evidently was not on the contract when it was entered into between the parties.

301 It is something that was placed there after the contract was entered into.

The Master: What is it?

Mr. Neumann: I refer to the little memorandum signed by Mr. Armstrong, dated December 17, 1920.

The Master: What does it say?

Mr. Neumann: Well, I do not think it ought to go into the record. I will show it to the Master.

The Master: Read it to me off the record.

(Mr. Neumann reads the paper to the Master.)

The Master: That is no part of the exhibit.

Mr. Ransom: We consent that it be disregarded.

Marked Complainant's Exhibit No. 74.

Q. The contract which is Complainant's Exhibit 74 is still in effect, there has been no modification of this?

A. That contract is a six-months' contract with the right on the part of the company to have a supply of oil for a stated period, to July 1, 1920.

The Master: You are operating under it now?

The Witness: We are operating under it now.

Mr. Hyatt: I move that it be stricken out as not responsive and, not only that, it is an interpretation of the contract.

The Master: Motion denied.

Mr. Hyatt: Exception.

Q. These two contracts of 1919 and 1920 represent your
302 best efforts to secure the lowest possible price for oil for the
Consolidated Gas Company and the New York & Queens
Company?

Mr. Neumann: I think that calls for a conclusion of the witness.

The Master: I think so, too. I will sustain the objection. I think the witness has testified to what he did, and I will find as a fact that it does represent his best efforts unless something develops to the contrary.

Q. Are you at the present time in charge of the purchase of coal for the Consolidated Gas Company and its affiliated companies, including the New York & Queens Company?

A. Yes, sir.

Q. For how long a time have you had charge of this work?

A. Since Mr. Gawtry left the company.

Q. About the first of the year?

A. It was during the early part of the year he resigned; I do not recall the exact date.

Q. And since that time you personally conducted the negotiations with coal companies for the different kinds of coal required by the Consolidated and its affiliated companies?

A. Yes, sir. May I modify some of my past answers about oil? I neglected to omit the New York Mutual Gas Company.

Mr. Ransom: I did not ask you for all the affiliated companies. I said certain of the affiliated companies.

Mr. Neumann: If Judge Ransom would only keep out the word "affiliated" I think he would avoid trouble.

Mr. Hyatt: It has a very indefinite meaning the word "affiliated".

303 Mr. Neumann: You are only mixing your own witness up.

Mr. Hyatt: In fact it arouses suspicion, your Honor.

The Master: What difference does it make?

Q. And prior to the time that Mr. Gawtry ceased to be connected with the Consolidated Gas Company and prior to the time when you took over his duties in connection with the purchase of coal, did you in the course of your duties as secretary of the executive committee and as the officer charged with submitting such matters to the executive committee, keep in touch with the prices demanded and paid for the different grades of coal and with the condition of the coal market?

Mr. Neumann: If the Court please, in the Consolidated case, and which this Master presided at, I think the record was quite clear, that Mr. Gawtry was the man who made the contracts for coal, he obtained the prices for it; Mr. Addicks obtained the prices for oil, and this evidently is in conflict with that.

Mr. Ransom: Not at all.

Mr. Neumann: Mr. Gawtry testified in that case he was the one who made the contracts for coal.

The Master: Are you going to have Mr. Gawtry here?

Mr. Ransom: I do not believe it is necessary.

The Master: It may not be necessary, but I would prefer it. You can probably make your record through Mr. Addicks, too.

304 Mr. Ransom: We have the contracts here. They are in the files, and certainly the man who submits these matters to the executive committee, so far as 1919 is concerned, and who has had control over the matter since the first of the year, can testify to this.

The Master: I will let you prove anything you want by Mr. Addicks, but I am indicating to you that I would rather have Mr.

Gawtry come and testify.

Mr. Ransom: Is the objection overruled?

The Master: Yes. If you want me to find beyond any reasonable doubt that the coal prices are right, I am indicating to you now I may have some doubt about it unless you bring Mr. Gawtry.

Mr. Ransom: Then I shall certainly do it.

A. May I have the question read?

Q. (Repeated.)

Mr. Hyatt: Does your Honor note how indefinite that question is?

The Master: Yes, I am allowing it.

Mr. Hyatt: Since Mr. Gawtry did this, and prior to that time.

Mr. Neumann: When?

The Master: Since the first of the year.

Mr. Neumann: That does not say how far back this witness' familiarity goes.

The Master: Let us have the answer.

A. I can answer that definitely and affirmatively, except that I do not recall at this time how much I have been in touch with the coal market in general; but I have been in touch with those prices which were given for coal, which I received through Mr. Gawtry and which I discussed with him prior to taking them to the 305 executive committee, so as to give them all the information available.

Mr. Neumann: If the Court please, I renew my objection in view of the witness' answer.

The Master: Denied.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Q. Does the New York & Queens Gas Company secure its coal through the inclusion of its requirements in the quantity purchased by the Consolidated?

Mr. Neumann: Same objection.

Mr. Hyatt: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. Judge, I would prefer to speak of that as anthracite coal rather than just coal, because there is another quality of coal known as standard white coal.

Q. Anthracite coal?

A. Yes.

Q. It does secure it in that way?

A. Yes, sir.

The Master: And did during the year 1919, and has since?

The Witness: Yes, sir.

Mr. Neumann: Same objection to the Master's question.

The Master: Yes.

Mr. Hyatt: Exception.

Q. Has the Consolidated Gas Company either on its own behalf or on behalf of the New York & Queens Company, or any other affiliated company, any contract now in force for the delivery of anthracite coal?

306 Mr. Neumann: Same objection.

Mr. Hyatt: It is irrelevant and immaterial, your Honor; I object.

The Master: I will limit the question to the New York & Queens Gas Company. I am not interested in other affiliated companies.

Q. Has it in its own behalf or in behalf of the New York & Queens Gas Company any contract for the delivery of anthracite coal?

Mr. Neumann: Same objection to that question.

The Master: I will limit it to the New York & Queens.

Mr. Ransom: Well, the contract is made in the name of the Consolidated.

The Master: That may be, but it is made for the New York & Queens.

Mr. Hyatt: I object to counsel testifying and putting that on the record.

Mr. Ransom: The Consolidated makes certain contracts for coal and includes in the quantity it buys the amount that the New York & Queens wants to purchase.

The Master: Your question is somewhat misleading, at any rate it is to me. Ask your question again and I will see.

Q. Have you any contracts for anthracite coal now outstanding?

Mr. Neumann: That is objected to.

The Master: Overruled.

Mr. Neumann: Exception.

A. No.

Q. For the New York & Queens Gas Company?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

307 A. No.

The Master: Or for yourself?

Q. Or for yourself?

A. Nor for ourselves.

Mr. Neumann: Same objection.

The Master: In other words, you are buying coal in the open market?

The Witness: No, not exactly that.

Mr. Hyatt: I object, your Honor.

Q. What is your present situation with respect to the purchase of coal, anthracite coal, by the Consolidated for the New York &

Queens Gas Company or for anybody else? How are you getting that coal?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. Our contractors are furnishing what coal they can and—

Mr. Hyatt: I object to the answer as not responsive, and move that it be stricken out, your Honor.

The Master: Overruled.

Mr. Hyatt: The contractors get what coal they can is not an answer to this question.

The Master: I think it is.

Mr. Hyatt: Exception.

A. (continued). And at a price. In connection with the New York & Queens the Lehigh & Wilkes-Barre Coal Company have been supplying the coal, as of March 25th, at an advance of 10 cents a ton over last year, that being a tentative figure and not one that could be used under contract for the ensuing year.

Mr. Neumann: Mr. Addicks, you read that figure from the paper you have before you, did you not?

308 Q. The Witness: I read the date. Yes, I think I gave the date.

Mr. Neumann: And that paper has a figure on it also, has it not?

The Witness: Yes, 10 cents a ton.

Mr. Hyatt: Would you be able to give that date without the paper?

Q. That is a memorandum made by you?

A. Yes.

Q. You are buying, then, your coal currently now from time to time as you are able to get it?

A. Yes, sir.

Q. And paying the market price as of the present time?

Mr. Chambers: I object to that.

Mr. Hyatt: I object to that.

Mr. Chambers: He did not say he was buying at the market price.

The Master: Objection sustained.

Q. What price are you paying?

Mr. Chambers: I object to that. He has already testified to what he was doing about it.

The Master: Is there a market price for anthracite coal such as you require for gas making purposes?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial and not yet shown to be within the province of this witness to testify to that fact.

Mr. Hyatt: I object.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: Mr. Addicks is an oil man.

The Master: He is qualified now as a coal man.

309 Q. Mr. Neumann: Why not qualify that by saying "trying to"?

The Master: Is there a market price for anthracite coal now, Mr. Addicks?

The Witness: Your Honor, it is almost impossible to get any anthracite coal. I made an effort to get some—

Mr. Hyatt: That is not responsive. I object and move that it be stricken out.

The Master: Tell us about the conditions.

The Witness: I endeavored to buy coal for immediate delivery last month and it was accepted by a concern at a definite price of \$8.67 including war tax for not exceeding 5,000 tons, and after having accepted the order they returned it and said they could not supply the coal.

Q. What company was that?

Mr. Neumann: Were you reading that from a memorandum, Mr. Addicks?

The Master: Do not interrupt.

Mr. Neumann: I think the record ought to show whether the witness is reading.

Mr. Hyatt: What they said is incompetent, irrelevant and immaterial.

By the Master.

Q. What I want to get, Mr. Addicks, is in a brief form just what you have found in the last few months about the anthracite coal condition, how many companies you talked to.

Mr. Hyatt: What he did, your Honor—what he did personally.

The Master: Yes.

Mr. Hyatt: What he was told we do not want.

The Master: Tell us all you can about it.

310 Q. A. This particular company was Thorne, Neil & Company. That was for not exceeding 5,000 tons.

Q. That is not the only company you dealt with, is it?

A. That is the only company I was able to get any price for coal from.

Q. That is not the only company you discussed the matter with?

A. We discussed the matter of coal with a great many companies

Mr. Neumann: If the Court please, I move to strike out "we discussed." I thought this witness was going to testify to what he did.

The Master: Yes, he is speaking editorially now.

Mr. Hyatt: Then let it be expunged, if he is going to speak editorially or any way except from his personal knowledge.

A. (Continued.) Williams & Peters, Lehigh & Wilkes-Barre Coal Company, Thorne, Neil & Company, the St. George Coal Company. I personally communicated with those companies and in addition to that I had an assistant communicate with other companies which I will mention if the Master please. Thomas Stokes & Sons.

Mr. Neumann: We object if these are the other companies with which the assistant communicated.

The Master: Overruled.

Mr. Neumann: Exception.

A. (continued). Philadelphia & Reading, Meeker & Company, Lehigh Valley Coal Sales Company, Lehigh Coal & Navigation Company, Burns Brothers, Patterson & Baum, Delaware, Lackawanna & Western Coal Sales Company. We have had communication with a concern known as Whitney & Kemerer.

Mr. Hyatt: Did you personally communicate with these companies, Mr. Addicks?

The Witness: I personally communicated with those I mentioned in the first place.

Q. What is the situation? You cannot get anthracite coal under contract at all just now?

A. No, sir; we cannot. They are not prepared on account of the situation in the mining region on wages; it has not been settled, and no one is prepared to make a price, a definite price for next year, with the exception, I think, of one where we have an offer of 10,000 tons of coal—well, even that is not definite, because that is subject to increase in miners' wages, so there is really no definite price.

Q. How long has that condition existed that you have not been able to get a contract?

A. We have not been able to get quotations prior to the 1st of April. The coal contract year is from April 1st.

Q. In other words, up to April 1st you had some coal contracts that were running out?

A. Yes, sir.

Q. But beginning April 1st you were not able to make any coal contracts at all?

A. No, sir. And in order to keep running we have been running into our stock of coal which we had on hand. During the month of April, for instance, we have received about 5,000 tons of anthracite coal, and during that period of time our stock of anthracite coal in our various plants has decreased about 30,000 tons.

Q. Where does the New York & Queens get its anthracite coal from?

312 A. The New York & Queens had some stock of coal on hand in the same way as the other plants, and we have a surplus stock of coal at Astoria which is available for the New York & Queens in case of necessity.

By Mr. Ransom:

Q. But your stock has been reduced to this extent which you have indicated?

A. Yes, sir.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial. We are not trying the Consolidated System here.

Q. With respect to the St. George Coal Company was any proposal for the delivery of anthracite coal received from them by you, or to your knowledge?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and it is not made to specifically apply to the New York & Queens Company at all. He may be talking about the entire Consolidated System here.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. A communication was received by the New York & Queens Company and forwarded to me, and I requested the writer of that communication to see me. He made an engagement to see me at a certain time, which he did not keep, and I am waiting to hear from him further.

Q. Have you that letter?

A. I don't think I have. Yes, I have (handing counsel).

313 Mr. Ransom: Referring to Complainant's Exhibit 69 for Identification.

I offer it in evidence. It was identified by Mr. Spear.

Mr. Hyatt: I would like to know, your Honor, what this tends to prove. I do not see what it tends to prove.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Mr. Hyatt: Same objection.

By the Master:

Q. Why was it necessary to see the writer of this letter, Mr. Addicks?

A. I wanted to discuss with him an additional supply of coal for 1920, as we have not in view now with our contractors of last year sufficient coal.

Mr. Hyatt: I object to that, that "we have not in view now," I object to that as not responsive and move that it be stricken out.

The Master: The motion is denied.

Q. What I am trying to get at is, this was apparently an offer of the St. George Company to deliver coal at a price. Was that price agreeable or did you think it was too high or too low?

A. That price, your Honor, if you allow me to look at it (taking paper) is \$8.54 alongside—

Mr. Neumann: I do not think the witness ought to be permitted to read into the record that price, and thereby get its contents into evidence.

Mr. Chambers: He does not answer your question.

A. (continued). Based upon the price of coal that the New York & Queens paid last year, it is the same price they were paying currently from the same company.

Q. Why didn't they accept the offer?

A. This price is \$8.54.

314 Mr. Neumann: I think this is very unfair to put this price in the record.

Mr. Hyatt: This ought to be off the record.

Mr. Neumann: I move that it be stricken out.

The Master: The objections to the paper are overruled. Mark it in evidence.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 69 in evidence.

Q. What I would like to know, Mr. Addicks, is why, if this price is not any higher than it was last year, it was not accepted?

A. That was subject to an increase in miners' wages.

Q. It is going to be increased anyway, if miners' wages are going to be increased.

A. This is furnishing coal for 10 cents over the price of last year, and that would make it \$8.64.

Q. I see this is alongside.

A. There is that difference. We would like to get all the prices we can from all the coal companies, based on a definite amount as to what the increase in miners' wages would be.

By Mr. Ransom:

Q. So you asked him to come in to see you?

A. Yes, sir.

Q. Or call you up?

A. Yes, sir.

Q. And they have not done it?

A. They have not been in; no, sir.

Q. Have you produced here from your files the original contract or contracts for the delivery of anthracite coal for the year 1919?

315 A. I have.

Q. How many of them are there?

A. There is a contract dated April 17th, and an additional letter dated June 27th.

Q. That is April 17, 1919, and June 27, 1919?

A. Yes, sir.

Q. From the Lehigh and Wilkes-Barre Coal Company?

A. Yes, sir.

Q. And these are produced by you from your files?

A. Yes, sir; from the company's files.

Q. And are these the documents which you submitted to the executive committee of the board of trustees of the Consolidated Gas Company in connection with the matter of the purchase of anthracite coal?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving that contract. The present state of the record is that Mr. Addicks had nothing to do with the making of coal contracts prior to the first of this year.

Mr. Chambers: I object to it on the ground that it already appears—what is the date of that?

Mr. Ransom: April 17, 1919, and June 27, 1919.

Mr. Neumann: Mr. Gawtry was then in charge of the coal contracts.

Mr. Ransom: I am asking for an identification of the contracts from the secretary of the executive committee, to whom they were submitted.

316 Mr. Chambers: I object to it upon the ground that it is going into the Consolidated Company's affairs.

The Master: That is not important, but I think we better have Mr. Gawtry. We are going to have him anyhow.

Mr. Ransom: That is all.

Mr. Chambers: Is that all you are going to call him for?

Mr. Ransom: I think so.

Mr. Neumann: I think we ought to know whether he is through with the witness before we go into the cross-examination.

Mr. Ransom: I am so far as I know, and I am reasonably confident that I am.

Mr. Neumann: You never answered a question directly in your life.

The Master: If anybody wants to cross-examine Mr. Addicks now is the time.

Mr. Chambers: Do you insist that we cross-examine Mr. Addicks?

The Master: Yes.

Mr. Ransom: Before we proceed with the cross-examination, if your Honor is willing, I would like to offer in evidence Complainant's Exhibits 64 and 65 for Identification, for which the foundation has now been laid.

Mr. Neumann: I object to those—those are the—

The Master: The Teele Exhibits based on the books that are now in evidence.

Mr. Neumann: Are those of 1919?

Mr. Ransom: They are.

Mr. Neumann: Where are the other ones, in 1918?

Mr. Ransom: There are no other ones.

317 The Master: I held them up until the books were in. Now that the books are in I am going to let them in.

Mr. Hyatt: No proper foundation has been laid for the books, and there is no proper foundation for these exhibits.

Mr. Neumann: I object to them as incompetent, irrelevant and immaterial. On the further ground that they are not properly proven. On the further ground that the underlying data upon which they are based is not in evidence, and if the court pleases, on that point I would like to elaborate a little bit.

The Master: No, you need not; I know about it.

Mr. Neumann: I want to call your Honor's attention to this: The witness Foy has testified that the original underlying data does not find its way directly into the books; that instead of that he puts in the books what Mr. Spear directs him to put in by a written report. For instance, take the work sheets, station work sheets that I called your Honor's attention to, those work sheets contain both oil and coal. The entries in the books are not made directly from those work sheets, but instead of that the entries find their way into the books from the report that Mr. Spear makes to the bookkeeper. Now, these exhibits, of course, are based on the books.

Mr. Ransom: No, these are not tabulations of the books—

318 Mr. Neumann: I think the witness Teele testified that he tabulated those from the books and the records will show. Please don't interrupt me until I get through.

Mr. Ransom: He tabulated them from the books—he tabulated them from the vouchers, and he checked the books to the vouchers and the report.

Mr. Neumann: Taking Judge Ransom at his own word, the underlying data upon which they are based is not in evidence, because the work sheets are not in evidence, one of the particular things I am calling attention to.

The Master: Objection overruled.

Mr. Neumann: Exception.

Statement of cost of production and distribution of the New York & Queens Gas Company for the year ending December 31, 1919, received in evidence and marked Complainant's Exhibit 64.

Statement of revenues and expenses of the New York & Queens Gas Company for the year ending December 31, 1919, received in evidence and marked Complainant's Exhibit 65.

Mr. Chambers: Did he offer those in evidence while I was out of the room?

The Master: Yes.

Mr. Chambers: I think he might have waited.

The Master: I will give you an opportunity, after you have examined the record, to add anything to the objection that you may wish to add.

319 Cross-examination.

By Mr. Chambers:

Q. Mr. Addicks, are you an officer of the New York & Queens Gas Company?

A. No, sir.

Q. You have't any relation with them except that you buy oil?

A. No, I am a director.

Q. You are a director?

A. Yes, sir.

Q. You hold no other office in it?

A. None whatever.

Q. How long have *run* been a director?

A. I think as long as the Consolidated Gas Company has been interested in the New York & Queens Gas Company.

Q. This is one of the subsidiaries of the Consolidated?

A. One of the affiliated companies, yes, sir.

Q. From this Complainant's Exhibit 71, being a contract for 1918—how many gallons is the proportionate share of the New York & Queens Gas Company?

A. There are no definite gallons allocated to the New York & Queens.

Q. How much did you let them have under that contract?

A. All they wanted.

Q. How much was that, have you any idea?

A. I don't know whether I have that record here or not.

Mr. Ransom: It is shown by one of the exhibits in evidence?

A. (continued). Somewhere between a million and a million and a half gallons, I think.

320 Q. That is a comparatively small quantity?

A. Yes, sir.

Q. Did you ever try to buy for them that quantity of oil from any company except the Standard Oil Company?

A. I tried to buy any quantity of oil from any company at that time.

Q. No, I am asking you if you ever tried to buy that requirement of that company alone from any company, like the Texas Company or the Gulf Refining Company?

Mr. Ransom: I object to that as immaterial and incompetent, unless limited to this period. "Ever" is a long time.

The Master: Yes, I think I will sustain the objection as to an indefinite period.

Q. Well, at this time?

A. I got a price within this period from the Texas Company.

Q. For that number of gallons?

A. For a million to a million and a half gallons per month for six months, with the privilege of renewal for another six months.

Q. What was the price?

A. Eight cents.

Q. From the Texas Company?

A. Yes, sir.

Q. In writing?

A. Yes, sir, in writing.

Q. Where is the letter, have you got it?

A. I have.

The Master: When you said a million and a half gallons, did you mean a million and a half a month?

A. No, a million and a half gallons a year.

Q. What is this?

321 A. A million to a million and a half per month for a six months' period.

Q. I asked you if you tried to buy a million and a half gallons—not a million and a half gallons a month—but the requirements of this company, from any company?

A. I think I did.

Q. That letter you speak of is the letter you wrote for the entire Consolidated system, is it not?

A. Yes, but it included—

Q. No, I am asking you, did you ask any company if they could furnish a million and a half gallons a year?

A. I did not write any letter different from what I have already testified to in the other case, and a copy of that is here.

Q. We don't want that. That is to say, you made no effort, did you, in 1918, to buy the oil requirements of this New York & Queens Gas Company separately from the rest?

Mr. Ransom: I object to that as incompetent and contrary to the facts. The witness has testified that he asked for a bid for any quantity of oil, however small.

Mr. Chambers: He didn't say so.

A. The letter says that I would be glad to be informed if they have any gas oil of from 28 to 30 Baume for sale and the price per gallon.

Q. Don't read that, that is 1919. We are talking about 1918.

Mr. Ransom: We are talking about 1919.

Mr. Chambers: I am talking about 1918.

Mr. Ransom: The objection was sustained to 1918.

322 The Master: I understand the question to relate to the 1919 requirements.

The Witness: That is what I am testifying to.

Q. In that letter you say, "For your information would say that the quantity involved would be in the vicinity of 122,000,000 gallons."

Mr. Ransom: The companies understood that they could submit bids for any quantity, however small, as shown by the fact that they did.

Q. Mr. Addicks, I am going to ask you a plain, simple question. Did you try to buy oil for the New York & Queens Gas Company in the quantity needed by that company only, without including your system?

A. I tried to buy oil for the New York & Queens Gas Company collectively with our other companies—

Q. No, did you try to buy oil for that company alone without including it with the others?

The Master: Let us understand this. Mr. Addicks, Mr. Chambers intimates by his question that if you had tried to buy, as a separate proposition, a million and a half gallons of oil for the New York & Queens Gas Company that you could have done better than you did under the method that you pursued. He wants to know whether you made any effort to buy, as a separate proposition, a million and a half gallons of oil to cover the requirements of the New York & Queens Gas Company, and whether you made it clear to the people you were inquiring of that that was all you wanted?

The Witness: I did not.

323 Q. Do you know that the New York & Richmond Company was buying it for 5.75, from your own table in the Consolidated case?

A. I do know in the case of the New York & Richmond that they did buy for 5.75.

Q. And the Brooklyn Union—and the Bronx Gas & Electric were buying it—

Mr. Ransom: When are you referring to?

Mr. Chambers: 1919.

A. Yes, I inquired of that same company for oil and they said they were not able to furnish any.

Q. What company was it, do you know?

A. That was the Gulf Refining Company.

Q. That was because you were asking for that large quantity?

Mr. Ransom: Or any part of it.

Mr. Chambers: He said he didn't try to buy in this limited quantity.

Q. Was it not known that you were in the market to buy 122,000-000 gallons of gas oil?

A. They knew that was the maximum that I was in the market for.

Q. When anybody said "Addicks" they knew that it meant 122,000,000 gallons?

A. They knew we bought in large quantities.

Q. They knew that Mr. Addicks was not around trying to buy a million and a half gallons?

A. I was not trying to buy a million and a half gallons only.

Q. In the Bronx Gas & Electric case, it was 7.55?

A. Yes, 7.55.

Q. And the Brooklyn Union 6.08?

Mr. Ransom: Yes, back in 1918.

324 Mr. Chambers: 1919, according to your own exhibit.

Q. 6.08, wasn't it, in March, 1919?

A. 6.08, and we were buying as low as 6.28 in 1919.

Q. Your contract is not as low as that that you put in evidence?

A. Not for the first part of it.

Q. That contract does not say six something, in 1919, it is over seven cents?

A. Yes.

Q. How do you explain this table here?

Mr. Ransom: I object to the question. Contracts made at different times—

Q. How do you explain the fact that this contract is over seven cents when you were actually paying six and something?

A. At this time, but this 6.08 is the same date exactly as our 6.08, the same date, March 26, 1919.

Q. Now, I can't understand how you can conform that with the price stated on the Exhibit 74.

The Master: This Exhibit 74 is dated December 4, 1919.

Mr. Ransom: But it covers the requirements for March, 1919.

The Master: How can it when it is dated December 4, 1919?

Mr. Chambers: That is the second exhibit. Where is the other one?

The Master: Exhibit 73 was dated March 28, 1919.

Mr. Chambers: I want the December, 1918, exhibit.

325 Q. Where is your contract that covers March 28, 1919, Mr. Addicks? Is this it?

A. March 28, 1919, is this contract.

Q. What price was it?

A. That was one and one-half cents less than the price that was involved on February 8, 1919, and that price, as a matter of fact—the New York & Queens Company, the first price was 7.7472, and at that date that I have just mentioned it became 7.7833, and then 1½ cents less than that figure which dated from April 1st. That is 6.2833.

Mr. Ransom: For the New York & Queens?

The Witness: For the New York & Queens.

Mr. Ransom: The Consolidated would be somewhat less.

Mr. Chambers: Just wait a minute.

Mr. Ransom: No, I won't let even you mix up the case.

Mr. Chambers: I ask that counsel keep from interrupting when I am cross examining.

Q. In other words, Mr. Addicks, gas oil dropped from December, 1918—it went down one and one-half cents when we get up to March, 1919?

A. Yes, they gave us a reduction of 1½ cents a gallon as of that date. The contract for that year enabled us to cancel the contract as of the 1st of July on a certain number of days' notice.

Mr. Ransom: That is why 1919 costs were so low.

Mr. Chambers: I move to strike that out.

Mr. Neumann: The Witness Ransom is again testifying.
326 The Master: No, he is not, and therefore I will not strike it out.

Q. Show me the last contract. The last contract, the present contract is this one dated December 4, 1919, is it?

A. Yes, sir.

Q. Exhibit 74?

A. Yes, sir.

Q. That extends for how long?

A. Six months with the privilege of renewal.

Q. Have they taken anything off of that yet?

A. Have they?

Q. Yes, like they did the one before?

A. That is a joke, Mr. Chambers.

Q. I know, but they took a cent and a half off the 1918 contract, didn't they?

A. Why, Mr. Chambers——

Q. Did they?

A. No, they have not taken anything off.

Q. You show here a contract for $7\frac{1}{2}$ cents, and it dropped to six cents.

The Master: He means they have not taken anything off the last contract.

Q. I said the 1918 contract they took a cent and a half off after it was made, and while it was in force?

A. While it was in force and we had the right to cancel.

Q. Now, I ask you if that has been done on this as yet?

A. No.

Q. Not yet?

327 A. The one you referred to a few minutes ago, the New York & Richmond, we have had to supply them with the oil, because the Gulf Refining Company has been unable to supply them, and they could not get any more.

Q. That contract ran to April 30, 1920, didn't it?

A. And they have not been able to get any oil since then, and we have been supplying them.

Mr. Chambers: I move to strike that out.

The Master: I don't usually strike out things. I will deny the motion. It won't make a bit of difference to me. The fact remains that a year ago the Richmond Company got some oil for 6.75, whatever it was, and this company paid 6.08, or 6.28, whatever it was.

Mr. Chambers: The Brooklyn Union, too.

The Master: The Brooklyn Union was about the same——

Mr. Ransom: About 7.75 last year, 7.50 or 7.75.

Mr. Chambers: They were less in 1918 than in 1919.

Mr. Ransom: You will have another guess on that.

The Master: Mr. Chambers, the point about it is this, isn't it, that we have got to get at the truth of the situation. Now, if the

truth of the situation is that the oil market is away up, let us have it. What is the use of fencing with these things?

Mr. Chambers: Well, I don't believe it is.

Mr. Hyatt: We want to get something authentic, we don't want to get any prophecies or hearsay evidence.

Q. There is no market price for oil, is there?

A. No.

328 The Master: I would like to say this: This is not an ordinary law suit between individuals standing at arm's length. It is a litigation in which the public is involved, and the defendants are public officers, and it is as much their duty as it is mine to get the facts right, and if this gas company is not getting enough for its gas it should be developed with the assistance of the defendants, and not by their throwing hurdles or obstacles in the way of finding out the facts.

Mr. Ransom: The complainant company now offers to put on this record the statements of the defendant Nixon as a Public Service Commissioner, presiding over hearings conducted by Mr. Farley, Solicitor for the defendant Nixon. I will take Mr. Nixon's statement on gas oil in those hearings, and will take the testimony on gas oil put in at those hearings right into this record.

Mr. Chambers: That is one of your usual bluffs.

Mr. Hyatt: Is this on the record?

The Master: Yes, it is on the record, and I am allowing it to stand on the record simply by way of argument. But, my point remains, and I reiterate what I have said before, that the attitude of the defendants in this case ought to be one of helpfulness rather than otherwise. If they have information leading them to believe that the price of gas oil is high they ought to help me find out just what it is.

329 Mr. Hyatt: The paucity of information is about the sources of supply and as to the quantities of stock on hand, and as to the need of getting it to the market. From all that has appeared in this record about which Mr. Ransom speaks, there is no definite information on that point, it is something very general.

Hr. Neumann: If the Court pleases, I respectfully except to the remarks of the Court and to the remarks of complainant's counsel with reference to the conduct of the defendants' counsel in this case. I say that so far as the defendant Nixon is concerned, that we have used every effort to assist in this case, we have not been obstructing, we have not been holding back any information, and the characterization was most unjust and unfair and unwarranted.

Mr. Ransom: Will the defendants accept my offer to take the statements of the defendant Nixon and the testimony brought out before the defendant Nixon by Solicitor Farley?

Mr. Neumann: The position of the defendant Nixon is that the case here should be proven by competent evidence. That is our position.

Mr. Ransom: Well, I will take his statement about it.

Q. See this right here, Mr. Addicks, Queensborough Gas & Electric. They are getting their oil for seven cents.

Mr. Ransom: When?

Mr. Chambers: 1918, December, 1918.

Mr. Ransom: I object to the question.

Mr. Chambers: This is your own exhibit.

330 The Master: Let us have the fact. What do you claim the average price of oil was during 1919, Judge Ransom, the average price of oil used?

Mr. Ransom: 6.7 cents per gallon.

The Master: I am going to ask counsel for the defendant this question: This complainant company contends that the proof so far offered shows that for the year 1919 the average cost of gas oil to this complainant company was 6.7 cents, and they will undoubtedly ask me to find that for the year 1920 it is not and cannot be any less, but will be and is a good deal more. Now, do counsel seriously contend that gas oil can be bought this year for less than 6.7 cents?

Mr. Ransom: May I complete the record? Exhibit 59 shows that the oil bought in 1919, the average price was 6.682. Thus far in 1920 it is 7.2833 cents.

The Master: I want counsel to tell me whether from their knowledge of this branch of the case their contention is that gas oil now or for this year at least can be purchased by this gas company, the New York & Queens Gas Company, standing by itself, for less than 6.7 cents?

Mr. Chambers: Yes, I do think so.

The Master: How much do you say it can be purchased for?

Mr. Chambers: I think it may drop to five cents or four cents.

The Master: Not what it may drop to, the sky may fall.

331 Mr. Chambers: That is my idea about it. It is subject to sharp and violent fluctuations.

The Master: Is there any proof that you have at your disposal to indicate that anybody now is buying oil at less than six cents or seven cents?

Mr. Chambers: Yes.

The Master: Where?

Mr. Chambers: The Municipal Gas Company of Albany.

The Master: What are they paying?

Mr. Chambers: Six flat, I think it is.

The Master: When did they make the contract?

Mr. Chambers: Last June.

The Master: I am talking about now.

Mr. Chambers: It extends to the 1st of July, that is now.

The Master: I don't know under what conditions they bought last June.

Mr. Chambers: I don't know whether they may have renewed it for another year. It covered from July 1, 1919, to July 1, 1920, six cents, away up in Albany.

The Master: What are they going to get it for after July 1st?

Mr. Chambers: I don't know, that is the last I saw.

The Master: Do you think they are going to, by any possibility, get it for less than 6.7 cents after July 1st.

Mr. Chambers: I would not be a bit surprised. I would not be a bit surprised two weeks from now to find that there is an 332 overproduction. It is running out of the ground very rapidly. I saw a moving picture the other day of so many thousands or millions of gallons of oil shooting up into the air and going to waste. Our contention is simple and plain, that the present prices are no indication of what they will be tomorrow, that it is subject to violent and sharp fluctuation.

The Witness: You asked me a question in regard to the Queensborough Gas & Electric Company at 7 cents. I claim that my contract made for 1919 was a more favorable contract than the 7 cent contract there shown.

Q. Although those figures are 7.57?

A. Very true, but as a result of the contract we bought gas oil cheaper than 7 cents.

Q. The truth of the matter is that you got a reduction—you did in that case?

A. Yes.

Q. Of one and one-half cents?

A. Yes.

Q. Right in the face of the contract?

A. I got a reduction of a cent and a half three months prior to the right we had to cancel that contract.

Q. There is no reason why that can't happen again, is there?

A. There would not be the same thing in this particular contract because it is a different form of contract. With the same form of contract that might possibly happen again, I suppose. I don't say now that it may possibly happen at this particular juncture, 333 because I think it will happen the other way. Our existing contract is with the absolute right of renewal for an additional six months, and I don't know of any contract today that is as favorable, any contract with any company that I am familiar with.

Q. Why didn't you make the same contract as you did in 1919?

A. Because I could not make a contract except for six months, and I finally got the right to renew for another six months.

Q. You are buying—I think you testified in the Consolidated case that you bought in such large quantities that there was only one company that could supply the demand?

A. There was no one prepared to bid on any quantity.

Q. If that is true, buying in such large quantities that you are at the mercy of one company, then this little company, the New York & Queens Gas Company, is penalized because it is tied up with this 122,000,000 gallons—isn't that so?

Mr. Ransom: I object to that as a false, misleading and inaccurate statement of the testimony of the witness in the Consolidated case. The witness should be confronted with his testimony. The witness did not testify in the manner stated by the Deputy Assistant Attorney General.

The Master: Well, the witness is over 21 years of age and he will answer the question.

A. I don't believe this company is penalized. On the contrary, I think the result of what I have done in connection with the New York & Queens Gas Company has been very much to the advantage of the New York & Queens Gas Company, and I have had several instances of it. The original dealings I had with the New York & Queens Gas Company was prior to this, and I presume I am not permitted to refer to that, but I succeeded in saying them a great deal of money at that time when they were dealing with other companies.

Q. They have got to take the Standard oil whether they want to or not, because they are tied up with you?

A. They take the oil which I contract for, which I think is to their advantage.

Q. I say they have got to take the Standard oil, haven't they?

Mr. Ransom: I object to that, there is no such testimony.

Q. There is no other company that can supply it?

A. There was no other company to supply it.

Q. But there were other companies that could supply a million and a half gallons?

A. I don't know of any other company than those of whom I inquired, that could supply it.

Q. You said you didn't inquire?

A. I inquired of all these companies as to 1920. That letter is in evidence.

Q. You inquired for the large quantity. You haven't any doubt but what the little Prudential Company could supply a million and a half gallons, have you?

Mr. Ransom: I object to that. Under the contract of 1920 they had a right to get a small quantity from any other company than the Standard Oil Company of New Jersey, and they could not get any other bid.

335 The Master: The question before us now is whether Mr. Addicks in asking for bids for 1920 asked for large quantities or small quantities. What did you ask for?

The Witness: I asked very much in the same terms as with respect to the prior contract, the paragraph which I read for 1919 to supply oil, although I did add some additional information.

Mr. Chambers: I want to observe one thing right here. If there wasn't something for which we are contending here about gas oil why are they so afraid every time we get up here to cross examine about oil. Mr. Ransom runs around here like a wild man and interrupts. If what they say is true why are they afraid of the cross examination?

Mr. Ransom: Why are you afraid to cross examine?

Mr. Chambers: I am not afraid to cross examine. I am cross examining and you are interrupting.

The Master: Mr. Ransom, let us see if we cannot let Mr. Chambers proceed for a few questions without interrupting.

Q. You haven't any doubt, Mr. Addicks, but that the Prudential Oil Company could supply a million and a half gallons?

A. Yes, I have a great deal of doubt.

Q. Do you know the Prudential Oil Company?

A. Yes, I know the Prudential Oil Company.

Q. Do you know that the Bradys are in that?

A. I understand Mr. Brady was interested. Whether he is now or not I do not know.

336 Q. The two Bradys?

A. I only know that from general information.

Q. You haven't any doubt but what the Texas Company could supply a million and half gallons, have you?

A. The letter of the Texas Company is on file.

Q. But that was for a large quantity. We are now speaking of a little million and a half gallons?

A. Let us see what the Texas Company says.

Mr. Ransom: I object to that. They offered to let them bid on any quantity they would, and they did bid on a small quantity of the total, and they bid a higher price. They bid on the quantity they wanted and bid a higher price.

Mr. Hyatt: I move to strike out the statement of counsel.

The Witness: The Texas Company did not bid on any gas oil, but said that they had an oil that they thought could be substituted for gas oil, and they finally—they offered to see me about it, but they did not see me about it, and finally the last word I got was that they were not in a position at the moment to supply any gas oil.

Mr. Ransom: May the record show that Mr. Chambers is now looking at these letters?

The Master: Yes.

Mr. Chambers: The witness is showing them to me.

Mr. Ransom: I am going to offer them in evidence in a few moments.

Mr. Neumann: You don't mean that.

Mr. Ransom: I do.

337 Mr. Chambers: Well, I won't look at them. I don't know what is in them.

Q. Were you referring to a letter from the Texas Company?

A. Yes.

Q. In answer to that one you showed me a minute ago?

A. In answer to the request for bids for the supply of 1920.

Q. That is a very large company?

A. Yes, I don't recall what its capacity is.

Q. You knew that the Gulf Refining Company was furnishing oil at about four cents to the Public Service Commission of New Jersey?

A. No.

Q. Don't you remember those contracts that were offered in evidence?

Mr. Ransom: You are referring to 1900 or 1772.

The Master: Don't interrupt. If you interrupt you must do it by way of objection.

Q. I am referring to June, 1919. Didn't you see that contract that was offered in evidence, the Public Service Commission of New Jersey?

Mr. Ransom: I object to that as incompetent and improper in form. It is an attempt to get something into this record that he cannot possibly prove.

Mr. Chambers: I am going to offer that contract in evidence.

Mr. Ransom: Then you don't need to do this insinuating sort of thing.

Mr. Chambers: I will do it now.

A. There was no such price in any such contract at such a time, and further than that, on my inquiry from the same company they said they had no gas oil to offer at the present time.

338 Q. I meant five cents. Did I say four cents?

A. You said four cents.

Mr. Chambers: I meant five cents.

The Master: I will adjourn now until next Tuesday morning at 9:30, and I will try to spend the day.

Mr. Neumann: Before we adjourn, and for the record--at the conclusion of the last hearing Judge Ransom announced, in his usual manner, for the record, that in a few days he would supply us with the information that Judge Mayer directed by his order. I think the Court and all counsel believed that that information would be in our hands prior to this hearing. I want it noted on the record that that information has not been supplied to us yet.

Mr. Ransom: I thought it would be in your hands before this meeting, but Mr. Miller left the room last Friday and went to Baltimore, and he did not get back in time so that I could go over some things with him in that connection. I shall hope to get it to you by tomorrow or next day.

Mr. Neumann: I want this situation cleared up, if the Master please. We have been given Teele's exhibits for 1918 and 1919. This was prior to their introduction into evidence. Counsel up to the present time has offered only the 1919 exhibits. We have had available the 1918 books, but the 1919 books we have not had available. We have not had an opportunity to check them. In fact, the situation that we are in is this: We are being given 339 a stuffed man to wrestle with while the books are in court here, and there will come a time when we may have to prepare for cross examination, and for our exhibits, and we have not the available data in order to prepare ourselves. I think, to say the least, that it is manifestly unfair. The situation was this, that at the conclusion of the hearing last Friday they told me that they wanted the books, and they would arrange with me to have the books at the 15th Street office on Monday. We spent all day Monday trying to get those books, and late in the afternoon Mr. Davidson telephoned

and told us that there was a mistake, that we could have the books Tuesday morning. We have not been able to work except for a little while, and here they are in court again today. The result has been that we could not get our data ready. It is manifestly unfair to us.

Mr. Ransom: The revenues and expense statement, and the statement of the cost of production and distribution for the year 1918 were furnished to the defendant because his solicitor Farley demanded it. It was not furnished to any of the other defendants because the solicitors for the other defendants did not ask for it or demand it. The only reason it was furnished to the defendant Nixon was that solicitor Farley asked for it.

The 1919 books were at the office of the Consolidated Gas Company, I am informed, about 1:30 on Monday. As far as I know they have been available ever since, except when they were brought here today.

340 Mr. Neumann: That is a most strange interpretation of that order of Judge Mayer.

Mr. Ransom: Not the order, your demand.

Mr. Neumann: Well, the demand. We did that in order that the order might not contain it. You gave it to us and not to the other defendants.

Mr. Ransom: The other defendants did not ask for it.

Mr. Neumann: You knew that was a demand on behalf of all the other defendants.

Mr. Ransom: No, the other defendants made their separate demands.

The Master: Who on behalf of the Public Service Commission is working on these books?

Mr. Neumann: Mr. Frank. If you want to talk to him he is right here.

Mr. Frank: The vouchers have been handed to me and taken back again so many times that I can't remember when they were taken and when they were brought back without reference to a memorandum.

The Master: We will not need those vouchers next Tuesday, will we?

Mr. Ransom: On next Tuesday I do not expect to take up in direct examination more than an hour or two. I think the defendants ought to be prepared to cross examine.

The Master: Are you not going to bring the operating officials over here?

Mr. Ransom: I shall expect to bring Mr. Morrison here on Tuesday.

The Master: I will tell you what I am going to do. I am going to take all of your direct proof on Tuesday, and finish with Mr. Ad-dicks, and with any other witness such as Mr. Halleran whose 341 cross examination can be finished. I am not going to require the defendants to proceed with the cross examination of Mr. Teele, or with the cross examination of Mr. Morrison, or with the cross examination of any witness which depends upon analysis of vouchers or books, or the items in them. I am going to give Mr.

Frank a chance to examine them. They are not very voluminous are they, Mr. Frank?

Mr. Frank: No, sir.

The Master: How many days do you think you need to make up the various exhibits and statements that the Commission will want to offer in this case?

Mr. Frank: Two weeks from now.

The Master: You think you will need two solid weeks?

Mr. Frank: I do.

Mr. Neumann: That is, if he has the books and vouchers constantly and without interruption.

Mr. Frank: Yes, and also a prompt compliance with a request for certain papers on the part of Mr. Davidson.

The Master: I am going to rely on Mr. Frank doing this as rapidly as possible, and I am going to give him time to do it.

Mr. Neumann: May I now ask that the Master direct when Mr. Morrison is called as a witness that the complainant produce the daily works record for the year 1919?

The Master: Yes, have it in court, and for 1920.

Mr. Ransom: I shall have Mr. Aldrich here on Tuesday to prove up the dimensions on that map, and I think they should cross examine him.

342 The Master: Yes, I shall expect the cross examination to go forward.

Mr. Chambers: And Mr. O'Connor, we can dispose of him.

The Master: Yes, bring him here. I will adjourn to Tuesday morning at 9:30, and will go forward with everything that we can do that day. I shall then probably adjourn for another week, to give Mr. Frank an opportunity to examine these records.

Adjourned to Tuesday, May 11, 1920, at 9:30 A. M.

Last Complainant's Exhibit 74.

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 11, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh and Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

WALTER R. ADDICKS resumed.

Cross-examination continued.

By Mr. Chambers:

Q. Mr. Addicks, when we left off last week, a week ago today, we were talking about oil purchased by the Boston Consolidated and the Public Service of New Jersey. You said you had not heard of those contracts at four cents, the five-year contract?

A. You did not say anything about Boston, you mentioned—

Q. You knew about the contract, didn't you, of the Public Service of New Jersey, and the Gulf Refining Company, whereby the Public Service purchased from the Gulf Refining Company 252,344 000,000 gallons of oil covering the period from August 1, 1914 to July 31, 1919, at a price which runs from 3.05 to 3.55.

Mr. Ransom: I object to that as incompetent and not within the issues here, no proof of any such state of facts before this Court in this case. It is an effort on the part of the Attorney General to interject and misrepresent facts as to which he is charged with knowledge.

Mr. Chambers: How am I misrepresenting any facts?

Mr. Ransom: You have not offered any proof of the contract.

Mr. Chambers: I am asking him what he knows about oil. He is called here as an expert on oil.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Did you, Mr. Addicks?

A. I don't recall any figures except as you mention them. I do recall a figure of a certain contract which was not entirely fulfilled on the part of the Gulf Refining Company at somewhere in the vicinity of five cents, four to five cents.

Q. Didn't you hear the representative of the Gulf Refining Company testify at the last trial that that contract was lived up to?

Mr. Ransom: I object to that as incompetent and not the proper method of proof. They cannot bind this complainant by asking this man on the stand whether he heard somebody else testify in another case to something which Mr. Chambers is willing, despite his oath as a member of the bar, to state.

345 The Master: Objection overruled.

Mr. Ransom: Exception.

A. The contract was not fulfilled. I heard him state that. He said they considered it fulfilled, but it was not delivered under the contract, all the oil was not delivered. I think it was about twenty per cent, according to my memory.

Q. That is your recollection of his testimony?

A. My recollection is that he said that they considered the contract was fulfilled, and that the United Gas Improvement so accepted it, but as a matter of fact they did not deliver within twenty per cent of the oil that was contracted for.

Q. That is your recollection of his testimony?

A. That is my recollection of the testimony, not only of himself, but of the other witnesses.

Q. Will you look at that and see if that is not just as I stated it (showing paper to witness)?

Mr. Ransom: I object to it as incompetent and not the proper method of proof. No contract is produced. He cannot ask this man in this case something about a copy of a document which was in another case; and no foundation has been laid.

The Master: I think counsel ought to stipulate that all contracts and exhibits in the case can be offered here without formal proof.

Mr. Ransom: I am willing to stipulate that all the testimony in the other case on the subject of gas oil and gas oil contracts shall be put in evidence in this case. In the absence of such a stipulation I shall continue to object to what seems to me a very improper and objectionable method of attempted proof.

The Master: Objection overruled.

346 Mr. Ransom: Exception. He is asking him to construe a copy of something that he produced. The witness doesn't know anything about it. This document was not proved by the witness even in the other case. There is no proof as to the identity of this document which is shown to the witness.

The Master: The witness having read that paper, Mr. Chambers, what is your inquiry?

Mr. Chambers: I am asking if that is not as I represented it to be in the question, as to the quantity and price.

Mr. Ransom: I object to it as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Ransom: I offer to stipulate into this record all the testimony of all the witnesses who testified on the subject of gas oil for either the defendants or the complainant in the case of Consolidated Gas Company vs. Newton, before A. S. Gilbert as Special Master.

Q. What were you paying for oil at the time this paper was dated here, Mr. Addicks, August 5, 1914?

Mr. Ransom: I object to that as not the proper method of proving any such contract.

The Master: Objection sustained, upon the ground that the 1914 prices are not in question here.

Mr. Chambers: Exception.

Q. Did you say you knew of the contract between the Boston Consolidated and the Gulf Refining Company?

347 The Master: As of what period, Mr. Chambers?

Mr. Chambers: Five year period, 1914 to 1919.

Q. Were you acquainted with that?

Mr. Ransom: I object to that as incompetent and not the proper method of proof.

The Master: I will let Mr. Addicks answer that.

A. I heard some testimony in regard to it, that is all.

The Master: I am not going to have any more of what you heard. Do you know anything about that contract of your own knowledge?

The Witness: Nothing, except what developed in the other case.

Q. Did you know what the Municipal Gas Company of Albany was paying for gas oil in 1919?

A. I don't recall now that I did.

Q. Do you know what the Troy Company was paying for gas oil in 1919?

A. I don't recall that.

Q. And the Utica Gas Light Company?

A. I don't recollect that.

Q. Did you make any investigation as to what those companies were paying?

A. I don't remember any investigation of what those companies were paying. I presume you mean in 1919.

Q. Yes, in 1919?

A. No.

Q. How about the Kingston Gas Light Company?

A. I don't recall knowing what the Kingston Gas Light Company paid.

Q. You are certain in your own mind, are you that it cost more at Albany, or ought to cost more, with transportation charges 348 than it does here?

A. I don't know as to that.

Q. Well, what would you say?

A. I would say a freight rate might have some effect on it, and the freight rate from the oil fields in Pennsylvania might have a favorable impression, depending on where the oil came from.

Q. You don't know of any oil fields nearer to Albany than to New York, do you?

A. No, but they may have a freight rate from Albany to the Pennsylvania fields—I am not familiar with that.

Q. But Albany is further away from any source of oil supply that you know of than New York?

Mr. Ransom: I object. Even the Attorney General ought not to misrepresent the map in a question. When he comes from Albany he ought to know that the Pennsylvania oil fields are nearer Albany than New York.

The Master: Objection overruled.

A. The New York Central connection to Pennsylvania by way of Albany, I should think, is not very different than from New York to the similar region.

Q. That is your idea about it?

A. That is my impression, yes.

Q. I notice here by this table that was offered in evidence in the other case that the New York & Queens, before you took hold of the situation, was buying gas oil for 3 cents, and after you took hold it jumped to 6.10 and 6.30?

The Master: What does that prove?

Q. How do you explain that, because you were buying in such large quantities—

349 Mr. Ransom: I object to the statement. I offered to prove that it dropped from 8 cents to 3 cents when they took it over, and the defendants objected. I had Mr. Spear on the stand.

The Master: That cross examination is not at all helpful, I believe, to the determination of this issue. I have got to know what gas oil, in the quantities required by the New York & Queens, could have been bought for in 1919, and what happened in 1912 or 1914, or some other year does not help us.

Mr. Chambers: We don't agree with you at all about that, and we want to have you take the proof as to other times.

The Master: That does not interest me at all, whether you agree with me or not.

Mr. Chambers: It does the defendants and it may the other court.

The Master: I am going to direct this trial. I am simply indicating to counsel now what I think is useful to the Master in determining the issues in this case. I am going to sustain objections to any line of inquiry that does not bear upon that situation.

Mr. Ransom: I have no objection to his stating what the change in price was between—

The Master: Well, I have. I am not going to lumber up this record—

Mr. Chambers: The claim in the bill of complaint that they have not enjoyed a fair return since 1906.

The Master: I don't care what they say.

Mr. Chambers: The same issue is raised in the Consolidated 350 dated—

The Master: I don't care what they say in their bill. The question is what, by actual experience, beginning January 1, 1919, is the result to this company at a price limited, as I understand it, to one dollar. I have got to know what it cost to make gas in 1919 and 1920, and as one of the elements I have to know what oil should have cost the New York & Queens during that period. I don't care what happened years ago.

Mr. Deegan: You are going to limit your inquiry to the period subsequent to January 1, 1919?

The Master: Yes.

Mr. Chambers: We except on the ground that the issues framed by the bill of complaint relate to the year 1906, and from then on down to date, or down to 1918.

The Master: Well, I didn't draw the complaint, but I am directing this trial.

Mr. Chambers: The present prices are abnormal and unusual and no fair tests of what the prices will be in the future, and no guide for the court to go by in making a decision in this case.

The Master: Do I understand you to concede that the price of oil in 1919 and 1920 was somewhere over 6 cents?

Mr. Chambers: You won't get any concession about it——

The Master: I didn't expect to get any concession, I thought I would make it clear that I could not get one.

Mr. Chambers: In 1919? I think they ought to have bought it for less than 6 cents. I am not conceding anything about 351 the price of oil. It may go down tomorrow.

The Master: You would not concede that oil was necessary to make water gas, would you?

Mr. Chambers: Oh, yes, I conceded that in the other case, but I won't concede how many gallons it takes to make a thousand cubic feet.

The Master: I didn't ask you to do that.

Mr. Chambers: Because it depends upon the quality of the oil and the skill of the operator and the efficiency of the machines.

Q. How long does your present contract extend, Mr. Addicks?

A. 30th of June, with the right to renew for a second period of six months.

Q. Then this contract that was offered in evidence here the other day extends to the 30th of June——

The Master: Do I understand that the contract is in evidence that you are asking him about?

Mr. Chambers: Yes.

The Master: Objection sustained.

Mr. Chambers: He didn't make any.

The Master: I am making it.

Mr. Chambers: Exception.

Q. What are you doing about the next period, from June on?

A. What am I doing?

Q. Yes, anything at all?

A. I am asking for prices on oil from various companies at the moment.

Q. In what quantity? the same kind of endeavor you made 352 before. You testified in the Consolidated case that you wrote some letters to the Texas and other companies?

A. Yes.

The Master: He testified to it in this case.

A. My letters at that time were for any quantity.

Q. What are you saying in your letters, what quantities of oil are you asking for?

A. I am asking if they have any gas oil for sale.

Q. Any quantity at all?

A. Any gas oil.

Q. Have you received your replies yet?

A. No.

Q. How long ago did you write?

A. Yesterday.

Q. Oh, you have written since you testified here last Tuesday?

A. Yes; the option expires on the 1st day of June to renew that contract.

Q. Well, you can renew this contract for another six months if you let them know by the 1st day of June?

A. I think you will find it stated there 30 days' notice prior to the expiration of the contract.

The Master: Before the 1st of July?

The Witness: Yes, sir; it is only a few days now.

Q. Is that the date that you refer to, in this Exhibit 74 (showing paper to witness)?

A. Yes, sir.

Q. How long will that 67,000,000—if you exercise the option, how long will that 67,000,000 last you, another six months?

A. That is the estimate.

Q. For all the companies?

A. Yes, all that are included in the—

353 Q. For which you buy?

A. Yes, sir.

Q. That will carry you to when?

A. 31st day of December, 1920, is the estimate.

Q. You are hoping, are you, to get oil at less than called for in this exhibit.

A. I am not.

Q. Then why are you writing?

A. I am going to find out just what the quotations are.

Q. What for, if you don't expect to get oil cheaper, why are you writing them? Why not exercise the option?

A. I am prepared to exercise the option, but I thought it wise to ask for prices.

Q. You have some object in view, haven't you?

A. Yes, for the information.

Q. Is that all?

A. Yes.

Q. Suppose they tell you they will let you have it for less than the price set forth in this Exhibit 74?

A. Then I should expect to get it for less.

Q. Will you take it or will you exercise the option?

A. Will I take it or will I exercise the option? The Standard Oil Company would be very glad, I think, to—

Q. No, I am asking you what you will do. Now, Mr. Addicks, you have a chance to get oil to December 31st for the price set forth

in Exhibit 74. Now, before you exercise the option you are writing to what companies?

A. All the companies I wrote to when I made that contract.

354 Q. That is the Texas, for one?

A. Yes.

Q. And what other companies?

A. The Texas—

Q. The Gulf Refining?

A. Gulf Refining, Sun, Sinclair, Tidewater, Atlantic Refining Company, Standard Oil of New York. I think that is all.

Q. Are you saying in your letter what quantities, or do you limit it?

The Master: He has already covered that.

Mr. Ransom: He said any quantity.

By the Master:

Q. Are you as familiar at all with the market conditions on oil crude oil gasoline, and all the rest of it?

A. I am familiar with gas oil prices from tenders being made to us repeatedly in the last 30 to 60 days, and also the prices that are being paid by other companies.

Q. Do you know anything about the production of crude oil?

A. The production of crude oil according to the—

Q. I ask you, do you know anything about it?

A. I have some very late information in regard to a report made by the United States Geological Survey for March.

Q. Have you been keeping in touch with that?

A. I have.

Q. Have you been keeping in touch with the price of crude oil?

A. Yes, but I do not know the price at the moment.

Q. Are you keeping in touch with the price of gas oil as it is being quoted?

355 A. Yes.

Q. And kerosene?

A. I have not been keeping in particular touch with kerosene.

Q. These matters of information you are keeping in touch with right along, aren't you?

A. Yes, sir.

The Master: Go ahead.

Mr. Hyatt: I would like him to define what he means by keeping in touch with it. I would like to know what he does to keep in touch with it?

The Master: I will ask him about that if you want me to.

Mr. Hyatt: I would like to have you ask him to tell us.

Q. Just tell us how you keep in touch with the market conditions on crude oil and gasoline, and gas oil, what you are doing right along?

A. I have clippings from the public press coming to me daily. I am also having periodicals—

Q. Trade periodicals, you mean?

A. Trade periodicals, and I am keeping up the system I had of the prices of Lima crude and Pennsylvania crude, and Standard white, on the curve which I had in the other case, and I am also noting the statements and papers which have been issued by Mr. Smith, the assistant to the Chief of the Geographical Survey, with whom I have had some correspondence, keeping in touch with the production as well as the price.

Mr. Neumann: I would ask the Court to ask the witness to explain what he means by "the system" he had. That does not mean anything to us.

356 The Master: I will let you ask him about that on cross examination.

Mr. Neumann: I thought it might be relevant here.

The Master: No, one question will lead to another, and we will never get through.

By Mr. Chambers:

Q. Mr. Addicks, you say you wrote yesterday and sent out all these letters to these companies you have mentioned?

A. Yes, sir.

Q. Yesterday?

A. Yes.

Q. Did you ask them to reply promptly, or what?

A. No.

Q. You left that to them?

A. Absolutely.

Q. You don't care then when they reply, whether they reply promptly or not, or you would have asked them?

A. I want a reply before the 31st of May, and if I don't get a reply—

Q. Why didn't you say so in your letter?

A. Because I asked for any quantity of oil, whether they had any for sale.

Q. But you didn't tell them whether your needs were urgent or not?

A. If I don't get a prompt reply I will follow it up.

Q. You could have said so in your letter.

By the Master:

Q. Isn't it understood that when you ask a concern for a quotation you expect you will get a quotation pretty promptly?

A. If they have anything for sale.

357 Q. You don't have to say, "Give me a prompt reply"?

A. No, sir, I would not expect it.

Q. That is not the usual custom in business?

A. I would not expect it.

By Mr. Chambers:

Q. Where isn't it the usual custom, Mr. Addicks?

The Master: Of course it is not.

Mr. Chambers: I disagree with the Master and take an exception.

The Master: The trouble with your disagreement with the Master is that the Master has handled probably a hundred times as many business matters as you have.

Mr. Chambers: I think it quite essential to ask for a prompt reply in the situation.

The Master: If I ring a man up and ask him for a quotation, I expect to get it right away if he has anything to sell. Let us have some ordinary common business sense in some of these matters.

Mr. Chambers: Exception.

Mr. Neumann: I take an exception also.

Q. If you don't receive a reply in how many days will you follow it up with another letter?

Mr. Ransom: I object to that as immaterial and having no bearing on the issues here.

The Master: I will allow it.

A. I should say if I do not receive a reply by the end of the week I would follow it up.

Q. By the end of this week?

A. Yes.

Q. You will write them again?

358 A. I would probably telephone them if they had a telephone in the city; otherwise I would wire them or write them, probably wire them.

The Master: Oh, this doesn't get us anywhere.

Q. If you receive a favorable reply from any of these companies will you enter into a contract with them?

A. I am very much inclined to do so.

Q. Would you? Suppose the price is less than that set forth in this contract, Exhibit 74, will you or will you not enter into a contract?

Mr. Ransom: I object to that.

A. If the price is more favorable than the price we have at the present time, and the party I am satisfied is responsible at this present time I would be very apt to buy some oil at this time from them.

By the Master:

Q. Let me ask you about that, Mr. Addicks. I do not recall at the moment what your price is for your renewal option. What is it?

A. It is the same price as at the present time.

Q. What is that?

A. I think that is seven cents at the refinery.

By Mr. Chambers:

Q. What comes off of that?

A. Nothing comes off, something goes on. It is seven cents plus transportation.

Mr. Ransom: I object to all this as academic. The price is more likely to be fourteen cents or sixteen cents than seven cents.

By the Master:

Q. Following up what Mr. Addicks has just said, the price
359 is now seven cents under your contract with the Standard Oil Company of New Jersey?

A. Yes, sir.

Q. You buy from the Standard Oil Company of New Jersey a quantity sufficient to supply the requirements of your companies?

A. We endeavor to do that.

Q. You have done that for years?

A. Yes, sir.

Q. You rely on the Standard Oil Company of New Jersey to give you your requirements?

A. Absolutely.

Q. Suppose the Gulf Refining Company comes along and offers you a quantity for 6.7 cents for the next six months, instead of the 7 cents, where will you be—enough to supply the requirements of the New York & Queens—where will you be?

A. I would give the Standard Oil Company an option to take that oil at that price.

Q. Suppose the Standard Oil would say that you have got to take the whole option or none where will you be, if you only get enough for the New York & Queens at 6.7 cents?

A. The Standard Oil Company told me last year if I could buy any oil from any other company that they would take the difference.

By Mr. Chambers:

Q. In other words, you are going to use these prices as a club over the Standard Oil, isn't that it, man to man?

Mr. Ransom: I object to that.

The Master: I am going to allow that. It is good business if he does.

Mr. Chambers: These companies know that if they give a quotation he is not going to buy any oil, he is going to the Standard Oil.

360 The Master: He has said just now that the Standard Oil Company of New Jersey gave him oral permission that if he could get any part of his requirements anywhere else for less than they are charging him they will permit him to exercise his option for the balance that he needs. That is why I asked the question, because I could see where, if he could buy a couple of million gallons

for the requirements of the New York & Queens, he would have to turn down the option, or be in a hole as to the other companies.

Mr. Chambers: It is self-evident to me that they are going to buy from the Standard Oil anyway.

Q. Will you answer my last question?

The Master: What was your last question?

(Question read.)

A. The Standard Oil Company has an option to supply this oil for the second six months.

By the Master:

Q. No, the question is, are you going to use it as a club?

A. Well, I think I would use it as a persuader.

Q. Well, if the Standard Oil were not persuaded, and you could get the grade of oil that you wanted at a less price, in view of the permission given to you by the Standard Oil, is there anything in the way of getting this oil at a lower price, as much as you could?

A. Nothing except the certainty of delivery of the party you are dealing with, and the responsibility of that party, their ability to deliver.

Q. So that in addition to the price you have the element of certainty of delivery?

A. That is an essential thing, certainty of delivery.

361 Q. So that when you have a price lower than the price of the Standard Oil the next thing you would inquire is, whether they had the supply and how sure it is going to be?

A. Yes.

By Mr. Chambers:

Q. You didn't write to any irresponsible companies, did you?

A. I didn't intend to.

Q. All those companies that you wrote to are responsible, are they not?

A. I so consider them.

Q. So that question does not enter into it, the question that the Master interjected into it, that you first had to find whether they were responsible. You picked out responsible companies?

A. They may be responsible for the New York & Queens supply. I have no doubt every one of them is.

Q. And when you wrote these companies you believed they could deliver the oil if they said they could?

A. For the New York & Queens—I have no doubt they could.

Q. If the Sun Company or the Gulf Refining Company offered you a sufficient quantity of oil to take care of the New York & Queens at say six cents for the next six months, would you take it?

A. I will tell the Standard Oil Company—

Q. Would you take it?

The Master: The question, Mr. Addicks is, if you get a price on any one of these companies to whom you have written for a grade of oil equal to the grade of the Standard Oil Company at six cents, in the light of the requirement of seven cents in your contract, and the Standard Oil does not reduce its price for that quantity—

Mr. Chambers: I didn't say that.

The Master: I am saying it.

Mr. Chambers: I don't think that is quite fair.

Q. Will you buy it from the other companies?

A. I will have to buy it from the Standard Oil Company if I take it under the option.

Q. But if they won't reduce it to six cents?

A. I do not see why I should not take it.

By Mr. Chambers:

Q. You have not said whether you would take it or not?

Mr. Ransom: Objected to.

The Master: Yes, he did. He said if the Standard Oil does not give it to him at the price quoted, which may be less than the others, he will take it from somewhere else, under the right he has.

Mr. Neumann: The witness' answer, as I understood it, was qualified. If you will have it read, you will see it has a qualification.

Mr. Ransom: The witness is not bound now to decide as between two questions of policy.

The Master: The witness has said that, assuming he gets a bid from one of these other companies for the quantity of oil required by the New York & Queens for the balance of this year, at a price less than that under the Standard Oil contract, and the Standard Oil Company will not give him the quantity at that price, he sees no reason why he should not take it from the other company: because the Standard Oil Company has given him permission to take the quantity if he can get it elsewhere.

Q. Suppose the Standard Oil would not give you permission, would you take it?

A. Well, the Standard Oil Company in December clearly stated to me—

Q. No, can't you answer that, Mr. Addicks?

Mr. Ransom: Let him answer once before this case finishes.

Mr. Chambers: No, I move to strike out what he has said.

Q. If they would not give you permission, would you take it?

Mr. Ransom: Objected to.

The Master: I will sustain the objection, on the ground that the witness has already stated they have given him permission.

Mr. Chambers: Exception.

The Master: I am not interested in what he would do if they did not, because he says they did.

Q. They gave you permission to take any you could get?

A. The time I made the last contract.

Q. In writing?

A. No, by interview with Mr. T. J. Williams.

Q. Well, would you take it—

Mr. Ransom: Objected to; the whole thing is academic, anyway, with the price at 14 or 16 cents—

Mr. Chambers: I read that article in The Times, 12 cents, inspired by the great writer.

364 By the Master:

Q. What was the situation, was it oral or in writing, Mr. Addicks?

A. The arrangement was oral, at an interview I had with Mr. T. J. Williams prior to the making of the formal contract.

Q. Why did you not put it in the contract, then?

A. In the contract with respect to—

Q. Yes, the right to purchase smaller quantities elsewhere.

A. They simply told me that if I made contracts elsewhere they would take the balance, and I inquired from everybody, all these companies this gentleman, the counsel, has mentioned—I inquired of all those, and none of them this year quoted any price whatever, and last year two of them quoted prices and both of them were higher prices, one at 8 and the other at $9\frac{1}{2}$ cents, as against the price I got from the Standard Oil Company. I cleared up the whole situation from beginning to end.

Q. Based upon your knowledge and experience in the purchasing of oil and your knowledge of present conditions, do you believe it is possible to get any quantity of oil necessary for the use of the New York & Queens Company at less than 7 cents for the balance of this year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, because he is writing now to see if he can get any.

The Master: Yes, and I am asking him now. What is your answer?

Mr. Chambers: Exception. I take an exception to the question.

A. I do not believe you can get it for twice that.

365 By Mr. Chambers:

Q. Now I show you a contract bearing date the 29th of September, 1916, between the Gulf Refining Company and the Boston Consolidated, for the purchase of 14,000,000 gallons of oil, for five years commencing April 1st, 1917.

Mr. Ransom: Objected to as incompetent and deliberately misrepresenting statements, on the part of the Attorney General. There is no such document.

Mr. Chambers: Wait, I have not finished my question.

Mr. Ransom: You have simply got something which you say is a contract.

Q. (continued). At a price specified in the contract as—

Mr. Ransom: I object to the statement. I object to that as an improper and vicious method of proof. He is just getting those things into the records.

The Master: I cannot stop an attorney from asking a question, no matter how vicious it may be. You have got to permit the question to be asked.

Mr. Ransom: I object to it on the grounds already stated. It is improper and an objectionable method of proof. It is a deliberate misrepresentation on the part of the Attorney General as to what that situation is, because he knows better by this time; if he did not know better in the Consolidated Case, he does know better now.

The Master: I sustain the objection on the ground that I am not interested in contracts made in 1916.

Mr. Chambers: This covers 1919.

366 The Master: I know it.

Mr. Chambers: Five years.

The Master: I know it.

Mr. Chambers: I take an exception.

Q. Were you familiar with the price paid by the Boston Consolidated?

Mr. Ransom: Objected to as already asked.

The Master: The question is not finished.

Mr. Chambers: I ask to have counsel cease until I complete the question.

The Master: I will ask counsel to let you finish the question, but I apparently cannot control him.

Q. Were you familiar with the price paid by the Boston Consolidated Gas Company in 1919 for oil?

Mr. Ransom: Objected to as already asked and answered, and as an incompetent method of proof, moreover.

The Master: I will allow it. It is competent in cross examination. I will let Mr. Addicks say whether he knows or is familiar with the prices paid in 1919 by the Boston Consolidated.

A. From the testimony in the other case, your Honor.

Q. That is all?

A. Yes, and statements made by the Vice President of the company at that time on the stand, and personally.

Mr. Ransom: I offer to have those statements placed in evidence along with the other testimony in the Consolidated Case, by the other witnesses.

Q. Mr. Addicks, you did not make any five-year contract for the Consolidated Gas Company in 1916 or 1917 or 1918, did you?

367 Mr. Ransom: Objected to as not within the period in the case.

The Master: No, I will allow that as bearing upon the possibility that this company could have had cheaper oil in 1919.

A. I did not make any five year contract, no. I made a contract for a period of, I think, three years.

Q. That was back when?

A. I cannot recall the exact date now. Somewhere around 1916 or 1917 it expired, but I do not recall.

Q. You did not make any such contract in 1916 or 1917, did you?

The Master: Mr. Chambers, I am not going to allow any more cross examination on that line, because I do not believe it is at all helpful or useful in this case. Judgment is what a man sees at the time he exercises it; that is his best judgment.

If I had used my best judgment last year I should have renewed the lease of my office for five years instead of three, and would save money, probably, the last two years. As I saw it then there would be ample office facilities downtown here in three years, and the price would not be any higher than I had agreed to pay, and I used my best judgment. Now, apparently, from conditions downtown, that judgment was all wrong, I was crazy not to have made a five year lease when the landlord tried to make me make a five year lease. Where do you get with this kind of testimony? There is nothing to it.

Mr. Chambers: I think so. I think we get somewhere.

368 The Master: Objection sustained.

Mr. Chambers: Exception. Other companies did.

The Master: Yes, one company guesses right and another man guesses wrong, and if the situation turned the other way and Mr. Addicks made a contract in 1916 for 6 cents or 5 cents, and the market had dropped, the bottom had dropped out of it, you would criticise him for paying too much. Now, that does not get us anywhere.

Mr. Chambers: No, not at all.

The Master: As I said in the Consolidated Gas case, there is too much theory—

Mr. Chambers: Yes, and you took the judgment of the directors in the Consolidated Gas case on everything.

The Master: Yes.

Mr. Chambers: Except where it was objectionable, and then you substituted your judgment.

The Master: I have had enough experience in business affairs to know that business men are not always right, any more than I am always right in reaching a conclusion on a legal problem presented to me. Business men have got to use their judgment, their best judgment; they are there to make money, and if courts and judges would have a little more respect for the judgment of business men, and assume they are honestly exercising their judgment and trying to make money for their companies, we would have less of these foolish practices.

Mr. Chambers: The chief object of the directors has been
369 to get a raise of rate here, and has been since 1917, and I
have a right to inquire and see whether they had that in mind
or not.

The Master: I am not going to assume that the officers of the company are going to gamble on getting a better rate and thus lose money for themselves and their stockholders. I am not going to do it.

Mr. Chambers: In their pleading they say that they have not had a fair return since 1906.

The Master: I told you I did not care anything about what they said.

Q. Have you studied the Mexican situation in the last few days or the last week?

A. In the last few days? Well, I have some information.

Q. You know what is going on in Mexico now from the newspapers, do you not?

A. Why, yes, I know there is a revolution on, from the newspapers. I also know—

Q. And you also know that the President of Mexico was unfriendly to the United States?

A. I do not know about the exact political situation with respect to the attitude of the former President of Mexico. The general impression I had was that he was unfriendly to the United States; whether he was or not I do not know.

The Master: Did you not talk it over with him?

The Witness: I did not communicate with him, your Honor.

Mr. Chambers: I take an exception to that, your Honor.

Q. Have you talked with any oil men about the outlook in regard to the Mexican oil supply?

370 A. Yes, I have had a talk with them—talked with them for a number of years.

Q. Do you agree with Mr. Little in what he says, as voicing the sentiment of others, that as soon as that situation clears up there will be a release of great quantities of oil?

Mr. Ransom: Objected to as incompetent and otherwise objectionable.

The Master: I am going to allow it.

Mr. Ransom: Who is Mr. Little, so far as this case is concerned?

The Master: Well, we will have Mr. Little in the case. Mr. Little was an expert, as I recall it, Mr. Addicks, produced by the defendants in the Consolidated Gas Case, and an employee or representative of the Public Service Commission of Illinois.

Mr. Chambers: I withdraw the question.

The Master: Just to indicate to you how useless this examination is, is there anybody in this room who will undertake to say how soon the situation in Mexico is going to be cleared up, or that it will be cleared up in the next six months, or by the time it is cleared up somebody has not blown the oil wells in Tampico to pieces?

Mr. Ransom: Oil went up yesterday, gas oil went up yesterday.

Mr. Chambers: It might be cleared up in a week and this oil released.

The Master: And the price of oil may be raised.

Mr. Neumann: I suggest that Mr. Ransom be sworn as a witness.

Mr. Chambers: That is just what I was trying to get you 371 to find in the Consolidated case, that the oil market was subject to violent fluctuation.

Mr. Ransom: Upward.

Mr. Chambers: It is not necessarily upward.

The Master: My conclusion in the Consolidated case was that the testimony justified a finding that the trend was upward and was continuing upward.

Mr. Chambers: If you will let me show the situation—

The Master: I will let you show facts, but I do not want you to waste time. I do not think that counsel for the State is under any obligation to confuse the issues. I think the obligation upon counsel for the State in this case is the same obligation that rests on counsel in every case, to clear up the issues.

Mr. Chambers: That is what I am trying to do.

The Master: To enable the Court to determine fairly as between the parties.

Mr. Chambers: That is what I am trying to do, but you do not want me to do it in these cases. Certainly if the truth is with the complainant, healthy cross examination cannot hurt them. But in the Consolidated case you stopped cross examination entirely, to which I took exception; and you are doing it substantially here, to which I take exception.

The Master: I am not only doing it substantially, but I am going to do it actually if you do not ask some useful questions.

Mr. Chambers: When you come to that point, then I sit down and take exception.

372 The Master: I am inclined to think you will.

Mr. Chambers: You can stop it now and save time, but I am going to stand up here and ask questions so long as I am able to.

The Master: I want to see if there is anything you have in mind to ask this witness bearing upon the price that is being paid by the New York & Queens Company for oil in the past year and a half, or what the probability is as to the price of oil going up or down in the next year or two, or three.

Mr. Chambers: You have a preconceived notion that the prices are going up; you have so found. If we can show you you are mistaken about it—

The Master: Then go on and show me.

Mr. Chambers: It may be like a voice crying in the wilderness, I don't know. You have never been in the wilderness, you said, but if I can shake out of your mind that preconceived notion that prices are going up—you see, you are now fixed on the idea that the prices tend upward and you say they will not go down.

The Master: Yes, so far as I could forecast in the Consolidated Case, they do.

Mr. Chambers: Before these cases reach the United States Supreme Court, which they probably will—because if we lose we will take them there—I will probably be around and say to you your guess was wrong.

The Master: I did not guess.

Mr. Chambers: Well, you said the trend was sharply upward, and you left it there.

373 . The Master: Yes, from the evidence before me.

Mr. Chambers: I have a right here, representing half a million consumers in one case and a number of them in this, to cross examine a hostile witness here.

The Master: That is where you entirely misconceive your duty in this case. You represent this gas company just as much as you do the consumers.

Mr. Chambers: Notwithstanding how badly the Attorney General is represented, I am in the case.

The Master: You represent the company as well as the consumers, and this company is part of the People of the State, and pays taxes to the State.

Mr. Chambers: Yes, and I think the company is in here to make the people pay more for gas when they ought not to. The company made a return of over six per cent on twenty-five million, and I believe it.

The Master: Go on. We are not trying the Consolidated case.

Mr. Chambers: It is just taking advantage of the situation, these companies are.

The Master: All right, have you anything else to ask Mr. Addicks?

Mr. Chambers: Yes, I have.

The Master: Proceed.

Q. A good deal of the oil comes from Mexico nowadays, does it not, Mr. Addicks?

A. A great deal of the oil?

Q. That we have here in the United States.

A. No, I would not say a great deal came from Mexico.

374 Q. But it is a great source of supply, is it not?

A. It is a great potential source of supply.

Q. What do you mean by "potential?"

A. And an uncertain source of supply, to my best information. Wells that produced very liberally at one time will turn to salt water and not produce, and then the situation in Mexico also makes it uncertain for the delivery of oil to this country.

Q. And if that situation was cleared up, why, perhaps there would be plenty of oil coming over the Mexican Border?

A. They would hope for more oil from Mexico. Of course, all that oil is not satisfactory for our uses, on account of its asphaltic and heavy characteristics. I had a sample of that, you will recall, in the last case; I produced a sample for examination.

By the Master:

Q. Is what you have just said applicable generally to the oil fields of Mexico, so far as they have been developed?

A. To the best of my knowledge, your Honor, that is the situation.

Q. That it is not a grade that you can use?

A. It is, a great deal of it, a grade that we cannot use. There is a field a distance from that which I hope we will be able to use.

Q. What is the trend of the oil prices, the oil market now, up or down?

Mr. Chambers: I object to that because there is not any market.

Q. So far as there have been any sales or indications of supply or sources of supply, or demand for it, what in your judgment is the trend, up or down?

375 Mr. Neumann: One moment, if the Court pleases. I object to that on the ground that the testimony thus far is that there are no spot deliveries, that they are all made by contract, long-term contracts.

Mr. Cummings: Do you think it has changed since the Consolidated Case. You found it sharply upward there.

The Master: I am going to find out what this record will show. I cannot decide this case on my record in the Consolidated Case.

Mr. Chambers: I object to it on the ground that all the evidence as it stands now is to the contrary, and they cannot contradict it—it is downward.

Mr. Ransom: There is no such testimony in this case.

The Master: The objections are overruled.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

Q. Mr. Addicks, answer my question, if you can.

Mr. Chambers: Just a minute, I want to add more to that, because it is important. I object on the ground it is speculative, a surmise, a guess.

The Master: Yes, it is an opinion.

Mr. Chambers: And contrary to their own evidence which is in this case.

The Master: I am calling for the witness' opinion on the subject.

Q. What in your opinion is the trend, up or down?

A. I think in the last sixty days or thereabouts it has been fairly stationary, from $14\frac{1}{2}$ to $15\frac{1}{2}$ cents a gallon.

376 Q. Well, what is the trend?

Mr. Neumann: I move to strike that answer out on the ground it was not responsive to the Master's question.

The Master: Yes, I will do that.

Mr. Ransom: I object to that.

The Master: It was not responsive. I asked him whether the trend was up or down.

Mr. Ransom: It does not have to be either, it may be stationary at a certain time.

The Master: Then that is his answer.

Mr. Neumann: He can say so.

Mr. Ransom: He has so answered.

The Master: No, he answered more than that.

Mr. Ransom: Exception.

Q. You can give me so much of the answer as I have stricken out, which said for the last two months it has been stationary, Mr. Addicks?

A. I should say that quotations were within—were similar within narrow limits; I will put it that way.

Q. For the last sixty days?

A. Yes, and not increasing as rapidly as during a period of, say, four or five months ago.

Q. How does that level of the last sixty days compare with the level of 1919, the high level of 1919?

A. I should say that—

Mr. Chambers: I make the same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. I would say the price of oil today was double what it was in 1919.

Q. I get the impression from what you have said that you do not expect it to go much higher?

377 Mr. Chambers: I think that answer ought to be stricken out; it was not responsive.

The Master: Yes, I am going to let it stand. I think it was.

Mr. Chambers: Exception.

Q. What is your opinion or judgment as to the future price; do you think it is going further up, or will it remain stationary where it was for the last sixty days?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial and speculative.

The Master: All opinion evidence is speculative.

Mr. Chambers: The witness is not competent to guess as to the future, and it is not a subject for opinion testimony.

Mr. Hyatt: There is a very extraordinary thing about this testimony, your Honor, in my humble opinion, and that is that there is no foundation given. In as much as there is no market price for oil, how can this witness determine whether there is an upward trend or downward trend, or what the situation is? It seems to me he is testifying, giving his opinion, on something that does not exist in the case and does not exist in fact anywhere.

The Master: He knows more about it than I do, and I am going to get his opinion about it.

Mr. Hyatt: It is just a dignified guess, that is the only way I can characterize it.

Q. What is your dignified guess which I term an opinion, Mr. Addicks?

Mr. Chambers: Same objection.

378 A. I think the tendency of the price of gas oil will be upward.

Mr. Hyatt: Of course, that is objected to, your Honor.

Q. Still up?

A. Upward to a point where the gas companies will no longer purchase it for the manufacture of gas, and they will have to seek a source other than gas oil.

Q. Seek a source other than what?

A. Other than gas oil. In other words, a quality of oil, a lower grade of oil than has been used heretofore as a gas oil. In other words, it will require a lower B. T. U. standard in order to use some other quality of oil, and not make the candle power.

Mr. Neumann: I move to strike it out, in reference to that part of it that states there is a lower grade of oil furnished.

The Master: Yes, motion denied.

Mr. Neumann: And also the part that the gas companies will have to use a different kind of oil.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What makes you reach that conclusion; on what do you base that judgment?

A. The great increase in the number of automobiles requiring more gasoline. The natural source of gasoline, that is the natural distillation of oil does not supply enough gasoline. The high pressure distillation method which has been introduced in the last four or five years takes up the gas oil, a certain portion of the process has taken up that source for gasoline, and the use of petroleum 79 is going ahead faster than the production at the present time.

Mr. Hyatt: I move to strike out the latter part of that, "and the use of petroleum is going ahead faster than the production at the present time."

The Master: Motion denied.

Mr. Hyatt: Exception.

Mr. Chambers: I move to strike it all out as being Mr. Addicks' less.

The Master: Motion denied.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Where are you going to get the lower grade oil?

A. We will have to get the lower grade oil from the same sources at we have obtained the gas oil.

By Mr. Hyatt:

Q. Mr. Addicks, do you know anything personally about the distillation of petroleum into gas oil and gasoline and these various distillates called hydrocarbons?

A. I have never been a refiner, if that is what you mean.

Q. How do you know, then, that this process which you call an improved process of distillation tends to bring out a greater quantity of gasoline and a less quantity of gas oil?

A. Only from reading and what the oil people tell me.

Q. Only hearsay, then?

A. Well, if that is hearsay, yes.

By Mr. Chambers:

Q. You started in the first of the year to buy coal, did you, Mr. Addicks?

380 A. Yes, some time in March.

Q. You had not had any previous experience in buying coal for the company, had you?

A. I had had previous experience buying coal, but not for this company.

Q. How long ago was your other experience?

A. I bought coal for the Boston Gas Company before I came to New York.

Q. Back when?

A. 1902 and prior to that date, and 1903.

Q. And from that time down to the first of this year you had not purchased any coal?

A. Mr. Gawtry purchased all the coal for the Consolidated Company during all that period.

Q. And you do not know anything about the sources of supply of coal, do you; you have not made any study of that?

A. Yes, I have been down in the mines.

Q. You do not want this Court to understand that that is running out, too, do you?

A. The coal is not running out, but the ability to get it is very difficult at the present time.

Q. We are in unusual times, then, I take it?

A. Yes, so far as the strikes are concerned; as they occur they are unusual at the moment.

Q. So far as everything is concerned, isn't that so?

A. Well, it is very difficult to get any delivery of first class—we are speaking of anthracite coal, I assume?

Q. Yes.

A. In the first place the labor situation in the mines is not settled; in the next place the strike on the railroad is retarding the delivery of the coal, and in the next place the strike of the harbor tugs of the railroad is making it so that they do not deliver any coal.

381 I believe they delivered one boat yesterday, the first one in, I guess, thirty or forty days. We are compelled to get out-

side tugs to go down and bring coal up from the terminals, which ordinarily would be delivered by the railroad.

Q. Labor is on the warpath, would you say?

A. Well, I think labor is unsettled. I do not know that it is on warpath.

Q. You would say that the times are abnormal now?

A. The labor situation is very much disturbed, there is no question about that.

Q. You do not want to use the word "abnormal?"

A. Well, I went through a similar experience in 1902 and 1903 with respect to coal, which was practically identical in that time, and other companies had to—I did not in my case, because I got frightened in time to fill up all my coal sheds with coal, and I got through that time without going abroad for coal, but other companies had to go abroad for coal.

Q. You looked ahead a little bit at that time?

A. Looked ahead at that time? Yes, I looked ahead at that time.

Q. And you bridged over the gap?

A. In that particular case of the Boston Company I succeeded in bridging that over.

Q. Now would you not say that conditions were abnormal all around?

Mr. Ransom: I object to that as vague in meaning and indefinite. What does he mean by abnormal, the attitude of the Attorney General, or what?

The Master: I will let Mr. Addicks say.

2 Mr. Chambers: No, I refer to the Consolidated Company.

The Master: I did not ask you to refer to anything; I have ruled on it.

Mr. Chambers: Well, I have the attorney in mind, for one thing.

A. I do not know of any time in my experience where it was so difficult to get coal, either hard or soft, and either coal or gas oil. In that situation being more acute than I have ever seen it, I would call that abnormal. As to when it is going to straighten out, everything is very uncertain.

Mr. Hyatt: You are only testifying for yourself, are you not, Mr. Addicks; you do not mean to testify for others?

Mr. Ransom: I object to the interruption by this self-constituted representative of the District Attorney.

The Master: Objection sustained.

Mr. Hyatt: Exception.

You would not say that was so only as to coal, you do not have in mind; that condition prevails generally, does it not?

I think the same thing applies to oil.

Does it apply to labor and materials that you use?

Labor is very, very uncertain.

It applies to everything, does it not—food and everything

Mr. Ransom: What applies?

Mr. Chambers: This abnormal and uncertain period.

Mr. Ransom: There is nothing abnormal about it.

383 A. I think there is a great deal of unrest with labor, a great deal of uncertainty. No one knows what the rate of pay of a man is going to be from one day to another.

Q. If you were writing some friend of yours, and if you were discussing the times, would you not say that the times were abnormal all around?

Mr. Ransom: Objected to as an effort to make the case ridiculous.

Mr. Chambers: Leaving out counsel for the complainant.

Mr. Ransom: It is not a form of question that will look intelligible on any record.

The Master: I will allow it, anyhow.

A. I shall have to ask you to repeat it.

Q. (Repeated by the stenographed.)

Mr. Ransom: I object on the further ground that it is calculated to bring the constitutional law officer of the State into contempt.

The Master: Objection overruled.

A. I think I should be very apt to express myself as I have just expressed myself. I do not know how I could do it more completely.

Q. Do you buy the bituminous coal for the company?

A. Yes.

Q. And you do not try to buy either the anthracite or the bituminous coal for the New York & Queens separate from the other, do you?

A. The New York & Queens does not buy gas coal, because they do not make any coal gas. They buy a certain amount of—they use their water gas tar for their boilers, and if they need additional boiler coal they have been heretofore getting that from the New York Edison Company.

384 Q. Would that be bituminous?

A. No, it would be ordinarily some grade of anthracite screenings, like No. 1 or 2 Buck, or possibly Pea coal.

Q. Then their coal requirements are of no consequence?

A. Their coal requirements for anthracite coal for generators are of consequence, but I do not think the coal for the boilers is very large.

Q. Do you buy that anthracite coal for them separate from the other companies, or do they help themselves out of the supply purchased for all the companies?

A. No, the custom has been, and I am going to follow that custom, of making contracts with several contractors for large tonnage, and the New York & Queens will have their requirements from that tonnage.

Q. You never tried to buy for them separately?

A. I have not intended buying for the New York & Queens separately.

Q. You have not intended?

A. No.

The Master: Could you buy cheaper if you bought in small quantities for the New York & Queens.

The Witness: I do not think so, your Honor.

Q. Did you ever try it?

A. I am trying now every source of coal supply at the present time. I am going to everybody who sells coal, to find out what I can get coal for. The difficulty is to get enough.

Q. Have you bought any coal for the New York & Queens in the last couple of months?

385 A. I do not think any coal has gone to the New York & Queens since the 1st of April, from any contractor.

Q. How much of a supply of coal did you have on hand for all the companies—a reserve supply?

Mr. Ransom: When? Objected to as vague and indefinite.

The Master: When?

Mr. Chambers: Well, I would like to know when. Any time—when he took hold. He does not know anything about it before that.

A. Well, the 1st day of April we had 104,000 tons of anthracite coal, and on the 1st day of May—I am giving that from memory, I think it is correct—and on the 1st day of May we had 30,000 tons less than that, and we had received from our contractors a total of 5,000 tons of coal during the month; not under contract, but as much coal as they could deliver to us.

Q. You have drawn on your supply some, you said?

A. We have drawn on our supply very seriously.

Q. Well, that is what it is there for, is it not?

A. It is there, but it is dwindling very rapidly and we are not getting coal except in small quantities.

Q. I mean it is there for emergencies, is it not?

A. Yes, but it is not what it has been in the past and, frankly, I am very nervous about it.

Q. You do not appear to be.

A. I try not to appear to be.

Q. How long have you been building up this reserve supply of coal?

A. We carry habitually a very large reserve supply of anthracite coal as well as bituminous, and of bituminous we had 240,000 tons and the 1st of April we had twenty.

386 The Master: 20,000?

The Witness: Yes, and we were entirely out of coal Thursday week at Astoria.

Mr. Ransom: That is why we have to have more working capital than Mr. Maltbie allowed.

Mr. Neumann: I move to strike that out as a gratuitous piece of testimony by the witness Ransom.

Mr. Chambers: Judge Hough did not think so. He only allowed

1,600,000, and then they did not have the 400,000. Judge Hough allowed what Mr. Maltbie allowed.

Q. Were you getting something out, Mr. Addicks, or putting something in?

A. I was simply arranging my papers.

Q. Has the New York & Queens any coal stored around its plant?

A. They have some coal on hand, yes, sir.

Q. How much of a supply, it will last them until when?

A. On the 1st day of May they had on hand 464 tons.

The Master: Of what?

The Witness: Of generator coal, gas generator coal.

Q. Any other kind?

A. They had also 135 tons of boiler coal.

By the Master:

Q. How many tons of anthracite did you say?

A. 464.

Q. How long would that last them?

A. I have a memorandum of what they used last year—

387 Q. Well, comparatively speaking, it would not last very long, would it?

A. It is a very small amount.

Q. 464 tons couldn't last very long.

A. Well, they have gotten some coal I think from that time from our Astoria stock of coal.

Q. Since May 1st?

A. Yes.

Q. But taking the May 1st balance of coal on hand at Queens, that wouldn't represent much of an output of gas, would it?

A. No—I'll tell you in a moment just what it is.

Mr. Chambers: I think that is all.

The Master: Mr. Neumann, have you anything?

Mr. Neumann: Yes, please.

The Master: Go ahead.

Cross-examination.

By Mr. Neumann:

Q. Mr. Addicks, you testified as to the date when you began to purchase a supply of oil for the New York & Queens in connection with the Consolidated Gas Company system; can you fix definitely the date when that practice began?

A. As I recall it, it was very shortly after the time that the Public Service Commission gave permission to the company to purchase the New York & Queens stock. At that time the New York & Queens were notified by the company that they had been receiving oil from that they could not furnish additional supply. They made a contract with the Sun Oil Company for a certain number of hundred thousands of gallons of oil.

Q. One moment.

388 Mr. Neumann: If the Court pleases, I don't think that that is responsive to my question.

The Master: I don't either.

Mr. Neumann: I move to strike it out.

The Master: The motion is granted. Can you more definitely fix the date when you began to purchase oil for the Queens Gas company, is the question.

The Witness: I think that will fix the date, but I don't recall the year.

The Master: Shortly after your company purchased stock in the New York & Queens?

The Witness: Yes.

Mr. Ransom: The order of the Public Service Commission is dated May the 20th, 1913.

The Witness: Well, it probably was 1913, then.

Q. Now, prior to that, the New York & Queens had been purchasing its gas oil separately from the Consolidated Gas Company requirements, had it not?

Mr. Ransom: Objected to as immaterial.

The Master: Objection overruled.

The Witness: I know nothing about the New York & Queens prior to that time; I didn't purchase any oil for it, if that is the answer you want.

Q. You didn't purchase any oil for them prior to 1913?

A. No, had nothing to do with it.

Q. And you were purchasing all of the oil for the Consolidated Gas Company prior to 1913?

A. Yes, as far back as I testified.

Q. And as far back as when?

389 The Master: We have got that.

Q. What are the requirements of the New York & Queens yearly?

A. I can't recall that offhand; not very large—a million and a half gallons is my memory.

Q. Does the contract show it?

A. No.

Q. Who would know what the requirements are for the New York & Queens?

A. Mr. Spear I think would know accurately exactly how much they are using.

Q. When you figure on the requirements for the entire system, you require to know what each company needs, do you not?

A. Yes.

Q. And you must have had that information before you when you made the contract for the entire system, including the New York & Queens?

A. I probably did, yes.

Q. Have you any papers with you that will refresh your recollection as to what the requirements of the New York & Queens is yearly?

A. No.

Q. Could you get such data and be prepared to testify on it?

Mr. Ransom: Objected to as already shown by Exhibit No. 59, which shows the requirements year by year since 1911.

The Master: Objection sustained on the ground that I am not going to allow the witness to go over the accounts, get information and come back again.

Mr. Ransom: The requirements for every year that the Consolidated purchased this oil for them is shown in Exhibit 59 in evidence.

390 Mr. Neumann: Exception. May I see the exhibit? (same handed to Mr. Neumann by Mr. Ransom).

Q. According to this exhibit, Mr. Addicks, the requirement in 1919 was 1,640,330 gallons?

A. That is very close to what I thought it was.

Q. Who arranges with reference to deliveries, do you do that?

A. Yes.

Q. Sir?

A. You mean as to the New York & Queens?

Q. The New York & Queens.

A. I don't quite understand what you mean by that question.

Q. Are the deliveries arranged for specifically in the contract?

A. The deliveries are arranged so that the quantity shall be in barges of a certain capacity.

Q. And who makes the designation as to when the barges shall deliver at the New York & Queens dock?

A. That is handled by the New York & Queens company; it doesn't go through me.

Q. You have no control at all as to what time and in what amounts the deliveries should be made to the New York & Queens?

A. That is a local matter with the company; they make a requisition for what they want and get it when they want it.

Q. And Mr. Spear would have that in charge?

A. Mr. Spear would have full knowledge in regard to it.

Q. You testified here with regard to making contracts for the Consolidated system, the Consolidated and its subsidiary companies; is the New York Mutual Gas Company one of the system or subsidiary companies?

A. I don't purchase oil for the New York Mutual.

Mr. Neumann: I move to strike that answer out on the ground it is not responsive.

The Master: I will let the answer stand.

Mr. Neumann: Then I renew the question.

The Master: All right, renew it.

Mr. Neumann: Will the stenographer please read the question.

Q. (Read.)

Mr. Ransom: I object to the question as not being an accurate statement of the witness's testimony.

The Master: Read it again.

Q. (Read.)

The Master: Objection overruled.

Now, read the question again to the witness slowly, Mr. Stenographer.

Q. (Read.)

A. The New York Mutual is a company in which we hold the majority stock, and in the other company we hold practically all of the stock.

The Master: Well, is the New York Mutual one of the subsidiary companies for whom you purchase oil?

The Witness: No.

Q. There is a separate contract made on behalf of the New York Mutual company for their oil, isn't there?

A. Yes.

Q. That is, independent of the contract that is made for the Consolidated Gas Company and the system?

A. Yes.

392 Q. And in the year 1919, do you know what the price in the contract for the New York Mutual Gas Company was for its oil, March 26, 1919?

The Master: A contract made on that date?

Mr. Neumann: Yes.

The Witness: I don't recall the exhibit—

Q. Well, here is Exhibit No. 487 in the Consolidated Gas Company case; look at that and see if that refreshes your recollection?

A. What date are you asking for?

Q. March 26, 1919.

A. Yes, I see March 26, 1919.

Q. And what is the figure that that contract indicates was entered into?

Mr. Ransom: Objected to as incompetent and not the proper method of proving the contract.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: 6,0821.

Q. Now, the Consolidated Gas Company and their allied companies made a contract upon the same day—and what was the figure in that?

A. The contract stated here is March the 28th, not on the same day.

Q. Well, two days later.

A. 6,0824.

The Master: What is that figure for the Mutual?

The Witness: 6,0821.

The Master: And for the Consolidated 6,0824?

393 The Witness: Yes. The New York Mutual has but one plant, whereas the Consolidated have a number of plants and and the contract provides for harbor delivery.

The Master: But the New York & Queens only have one plant?

The Witness: The New York & Queens only have one plant.

Mr. Ransom: The price here given is for the Consolidated 21st Street plant, as I recall it.

Mr. Neumann: I ask that that be stricken out. I ought to be allowed to cross examine.

The Master: I want to get the facts; now, what is the fact about it.

Mr. Neumann: The point I have in mind here is this, that here are these people claiming that by reason of the fact that they buy in large quantities, they get it cheaper.

The Master: There never was any such claim.

Mr. Neumann: It was all through the Consolidated Gas Company case.

The Master: Oh, not at all, there was never any claim that they got it cheaper.

Mr. Neumann: I think the record in that case will speak for itself.

The Master: What I want to know, Mr. Addicks, is this: The price that the New York Mutual paid in March, 1919, was 6,0821?

The Witness: Yes.

The Master: Now, what is this figure of 6,0824, isn't that the contract price for the Consolidated?

394 The Witness: At one of their plants, yes, sir.

The Master: What was it as to other plants?

The Witness: I'll have to refer to the contract, your Honor.

The Master: Let me see that exhibit.

Mr. Neumann: Here is the exhibit, they introduced that in evidence themselves (handing same to the Master).

The Witness: That is delivery at 21st Street.

The Master: I cannot quite understand that. What was it at 99th Street?

The Witness: At 99th Street it was 6,1082.

By the Master:

Q. In other words, the 21st Street was the lowest price of all?

A. Yes, 21st Street was the lowest price of all—6,1082 for 99th Street and 6,0824 for 21st Street.

Q. Well, now, the prices on this exhibit in the Consolidated Gas case, where it speaks of 6,0824 for the Consolidated, means including lighterage to 21st Street, does it not?

A. Yes, sir.

Q. And the price of 6,0821 for the New York & Queens, according to this exhibit, includes lighterage to Queens, does it?

A. No, sir, that is the Mutual.

Q. Means including lighterage to the Mutual plant?

A. That is the Standard Oil Company of New York.

295 Q. Well, I don't care who it is, the fact is that taking the
New York Mutual plant in March, 1919, they were able to purchase oil delivered to the Mutual plant for 6.0821?

A. Yes.

Q. Under the contract that you made, you managed to get oil for the 21st Street plant of the Consolidated for 6.0824?

A. Right.

Q. And that included lighterage?

A. Yes, sir.

Q. What was the basic price?

A. The basic price was $7\frac{1}{2}$ and then reduced.

Q. Well, the basic price was 6, then, after the cent and a half reduction?

A. Yes.

Q. So the oil delivered at 21st Street was 6 cents plus lighterage, making it 6.0824?

A. Yes.

Q. Do you know what the basic price of the Mutual was?

A. I think the same price.

Q. Six?

A. I think so.

Q. How would that be 6.0821, is that a variance in the lighterage?

A. Yes, a difference in the lighterage.

Q. You think it is the same?

A. I think it is the same.

By Mr. Neumann:

Q. You testified that you didn't make that contract for the New York Mutual Gas Company, didn't you?

A. I did.

Q. And your information on that point, of course, is based on what some one told you?

296 A. Yes.

Q. And who was it that told you that the price was the same?

A. I was in contact with the Mutual contract at that time, discussing the matter with Mr. Parkhurst, the Vice President of the company.

Q. Now, independent of any contracts that you made for the Consolidated and affiliated companies, what efforts did you make, solely and wholly on behalf of the New York & Queens Company, to make a contract for them?

Mr. Ransom: I object to what efforts he made, as having already been fully covered.

The Master: Read the question.

Q. (Read.)

The Master: Objection sustained.

Mr. Neumann: I will put it in the year 1919.

The Master: Objection sustained. I found the price—1918 at these plants at 6.05, didn't I?

Mr. Ransom: About that, yes.

Mr. Neumann: May I ask the Master upon what ground that objection was sustained?

The Master: I think it is sufficiently covered.

Q. I now show you Complainant's Exhibit No. 72, Mr. Addicks, and I direct your attention to the writing on the bottom, in lead pencil (showing witness)?

A. Yes.

Q. When that letter was received by you from the Standard Oil Company, that lead pencil writing was not contained thereon, was it?

A. No. I should say it was not.

397 Mr. Neumann: I move that the lead pencil writing on the bottom of this exhibit be stricken from the record.

The Master: Is it in the record?

Mr. Neumann: Well, the whole exhibit is in.

The Master: Well, that isn't part of the exhibit; the letter ends at the signature.

Mr. Ransom: It is really a notation in the regular course to the effect that the lighterage figures there given were to be kept up.

Mr. Neumann: I object to the witness Ransom testifying to what it contains; I didn't put it on the record.

Mr. Chambers: You found that the oil price was in excess of 6.9.

Mr. Ransom: The present price.

The Master: The present price, yes. The average price for 1918 and for the first eight months of 1919 I think made about 6 $\frac{1}{2}$.

Mr. Chambers: 6.9 for the first eight months of 1919.

The Master: Yes. Then I said that over in the Astoria plant, it would indicate from their records that it was something lower than the average for the first eight months.

Mr. Chambers: 6.08. Then you found that the price of oil was in excess of 6.9—that is really your finding.

The Master: But that is 1919, the first eight months.

Mr. Chambers: I can't yet see how you can do it in the face of this exhibit.

Mr. Ransom: Well, the price of oil was about 10 when he found 6.9. It shows how conservative the Master was when he found 398 the price 6.9 when it was about 10.

The Master: Go ahead. Is there anything else, Mr. Neumann?

Mr. Neumann: Yes, if the Court please.

By Mr. Neumann:

Q. Mr. Addicks, this contract, Complainant's Exhibit 71 contains lighterage rates, does it not?

A. Yes.

Q. When you determine upon the lighterage rate, what do you

take into consideration with reference to confining yourself solely to the New York & Queens Company?

A. I don't understand your question.

Q. Well, you take into consideration the quantity they require, do you, for delivery there?

Mr. Ransom: Objected to as vague and meaningless. The lighterage rate is something that this company does not fix and the oil company does not fix.

Mr. Neumann: Well, I can't jump right into the question, you know that yourself.

The Master: Go ahead, Mr. Addicks says he doesn't understand that one, now what is the next.

Q. You have to know, at that time, what the requirements are of the New York & Queens Company, do you not?

A. For what?

Q. For gas oil for the entire period.

Mr. Ransom: Objected to as vague and meaningless.

The Master: I don't get it; what is the point?

Mr. Neumann: What I am trying to bring out here is this— of course, if I tell it, it is useless to bring it out.

399 The Master: Well, I don't get your point, I don't understand your question, I don't know what you are driving at.

Mr. Neumann: I am trying to show that the witness who is making a contract for oil for companies connected with his main company must have in mind the requirement of each company.

The Master: Yes, he testified to that.

Mr. Neumann: He must figure on the lighterage; he must figure on conditions, because the lighterage figures are all in the contract; how does he arrive at what is a reasonable figure for lighterage?

The Master: But quantity has nothing to do with it necessarily.

Mr. Neumann: Doesn't it depend on deliveries and times?

Mr. Ransom: The contract fixes the lighterage rate and says that if the lighterage rate goes up or down, the price goes up or down.

Mr. Neumann: That might indicate as to whether he had this particular company in mind, or whether he just had the entire system in mind, that is what I am trying to get at.

The Master: Well, it doesn't make any difference.

Mr. Neumann: In this case, if the Court pleases, a few cents out of the way on any particular thing will change the whole thing. We are in a close case here.

By the Master:

Q. Mr. Addicks, I don't know as I get Mr. Neumann's point precisely, but on the question of lighterage, you buy at a basic rate plus lighterage, do you not?

A. Yes, sir.

Q. That lighterage is charged by the lighter, by the cargo, is it?

A. That is charged at a certain fraction of a cent.

Q. Per what unit?

A. Per gallon, depending on its location in the city, and also depending upon the capacity of the barge that the contractor may deliver at a certain point. You couldn't get 10,000 gallons in the barge at a point for lighterage as expressed in that contract.

Q. As I understand it, there is a certain price for a certain lighterage limit in the harbor?

A. Yes, sir.

Q. That runs up to about 99th Street on the East River?

A. I think it is 99th Street; I think 99th Street is within the lighterage limit; Ravenswood is within the lighterage limits, but in this oil area there are different prices for each particular point.

Q. Within lighterage limits?

A. Yes, within lighterage limits. When it comes to the question of delivery of the coal by the railroads, they deliver to a certain point within lighterage limits and after that you have to have your boats towed and pay an additional amount for that.

Q. In these contracts, so far as lighterage contracts are concerned, is that a matter of negotiation between the oil company and the lighterage company, or is it a scheduled price?

401 A. It is the amount that the Standard Oil Company of New Jersey have to pay themselves for lighterage, and that is given to me in a list of lighterage charges, and you will note that in a letter of January 8th, 1919, they make a statement that the price, for instance, has been advanced and they can't give it to me definitely until a later date—then they give it to me definitely.

Q. In other words, your contract is subject to variation in the cost of lighterage?

A. Yes, sir.

Q. And is always subject to that?

Q. Yes, sir, and has been for a number of years.

The Master: Now, what is your point, Mr. Neumann?

By Mr. Neumann:

Q. And those lighterage rates are set forth in the contract, are they not?

A. Yes, sir.

Q. Now, in order to transport oil down to the New York & Queens, you use Flushing Bay, do you not?

A. Yes, sir.

Q. You say you don't know anything about deliveries to the New York & Queens; you say you haven't control of that?

The Master: He said he did not order out the stuff; that the New York & Queens ordered out the goods when they needed it, isn't that your testimony, Mr. Addicks?

The Witness: Yes. The only thing that is regulated, as far as the contract is concerned, it is stated the amount that must be—
for instance here in Exhibit No. 71, it states here that the
402 minimum cargo for the New York & Queens shall be 2,000 barrels.

Q. And 2,000 barrels would contain how many gallons?

The Master: About fifty tons?

The Witness: 100,000 gallons.

Q. Have you Exhibit 69, Mr. Addicks?

A. I haven't any exhibits here.

Q. Well, Mr. Vilas said you had it?

A. Oh, have I?

The Master: Isn't that the St. George coal letter?

The Witness: Oh, yes, I have that.

Mr. Neumann: I just want to call attention to this exhibit that these lead pencil marks are not to be taken as part of the exhibit.

The Master: Of course not; I don't think it is necessary to make any reference to them.

Mr. Neumann: Well, right here I would like to say to the Court that the position I am in is this: I have not been given any of these exhibits and I have been at a distinct disadvantage. Now I suggest that hereafter, if there are any exhibits introduced, that they be not introduced until we be given copies of them.

The Master: I won't make any such rule.

Mr. Neumann: Well, it is unfair to introduce an exhibit here and not give us a copy.

The Master: Is there any rule that you are to have copies of exhibits?

Mr. Neumann: Yes, I think so; that is a courtesy that I think has been universal in any law suit.

The Master: When did that rule come in?

403 Mr. Neumann: It is a universal custom.

The Master: Well I never heard of it and I have been practicing law for pretty nearly thirty years.

Mr. Neumann: And I have been practicing for twenty-four years and I have never put in any exhibit without furnishing a copy.

The Master: Well you must have been practicing over in Suffolk somewhere.

Mr. Neumann: Perhaps I was practicing among gentlemen.

The Master: Well I never saw it done. Mr. Neumann, never heard of it before, until I got into this case.

Mr. Ransom: We have done it and shall do it in this case.

The Master: Anything else?

Mr. Neumann: There was just one question. This is rather disconnected because I wanted to take it up at the time.

Q. Mr. Addicks, you testified in answer to a long question there about oil, your familiarity with oil, the system you had; will you please tell us what that system is?

The Master: Which system are you talking about?

Mr. Neumann: I wanted the Court to bring it out at that time. It was in answer to one of your questions; he went into a long talk about how he kept himself advised as to the market, and he said "the system we had."

The Master: I think he was talking about that curve on crude prices—is that what you meant?

The Witness: That is what I was referring to.

404 Mr. Neumann: That doesn't mean anything in this case.

The Master: Well it happens to mean something to me—however, I will bring it out.

By the Master:

Q. You have been keeping a sort of chart diagram indicating the rise and fall of crude oil prices, have you?

A. Yes.

Q. And as the price rises or falls, you carry it on a line which curves in accordance with the rise and fall on this chart?

A. Yes.

Mr. Hyatt: Is that chart in evidence?

The Master: No.

Mr. Hyatt: Then I object to this line of questioning.

The Master: I was only asking because Mr. Neumann wanted to know what the witness meant.

Mr. Hyatt: You led the witness anyway.

The Master: Well, that is a habit that I have, to lead a witness and get a fact that is not in dispute.

Q. Do you or do you not keep a chart in the manner I have described?

A. I do.

The Master: Now, is there anything else, Mr. Neumann?

Mr. Neumann: That is all.

The Master: Now, Mr. Hyatt.

Mr. Hyatt: I have but one or two questions.

405 Cross-examination.

By Mr. Hyatt:

Q. Mr. Addicks, do you in the course of your experience know of any gas company that has prepared specifications and invited bids for either oil or coal, covering certain details, such as time of delivery, quantity, specific gravity, as in the case of gas oil or anything of that sort? Is my question clear, Mr. Addicks?

A. Well, I would rather have it read; perhaps it may be clear.

Q. (Read.)

A. I know from seeing contracts that they have a certain form from time to time in regard to oil, but nothing of late years.

Q. Why not, of late years, Mr. Addicks?

A. Because, as some gas people have said, they have to take what they can get.

Q. In other words, the gas company has to go as a petitioner to the coal company or to the refining company to get their prices and to get their quantities, and so on, adjusted, is that it?

A. Well, as far as the oil today is concerned, they can't specify very particularly in regard to the oil, I think, much more than I do. I specify a certain gravity of oil; I specify a certain maximum quantity, and I specify it must be by harbor delivery, not by rail, except in certain plants, where there are rail deliveries I would specify both, but my contract requirements have been equivalent to a prior year's use, and results equivalent to that.

Q. Well, do you prepare blank forms and specifications and leave them, for instance in the gas oil purchase, leave them with the companies, who sell gas oil and invite them to make prices, in-
406 vite them all to make prices at one and the same time, or do you take up the matter separately with each of the companies?

A. I have been writing letters to all companies and they are all in the same phraseology.

The Master: And written at the same time?

The Witness: And written at the same time.

The Master: What are you asking for now, what gravity?

Mr. Hyatt: I am not after the gravity so much, your Honor, as I am after the question of practice. He said a moment ago that they pursued a system here and I want to see what the nature of the system is.

The Witness: My last letter said, "Will you kindly inform me if you have any gas oil for sale; if so, state gravity and price for harbor barge delivery in New York City. We would be glad to know the capacity of your barges."

The Master: That is the letter you sent out yesterday?

The Witness: Yes, sir.

Q. Then you assume that there is a shortage in the gas oil, do you not; that is, that letter assumes, from the character of its language, that there is a shortage in gas oil?

A. I don't know whether you would assume that from that letter or not—there is no question about there being a shortage of gas oil at the present time.

Q. How do you use this information that you collate from the press or from the United States Geological Survey and Reports, Mr. Addicks, in connection with your purchases of gas oil for in-
407 stance?

A. Why, I use it with the idea of seeing what the trend of petroleum is as to average production.

Q. You mean the trend of price?

A. The trend of price of petroleum at the wells and as to the quantity of petroleums being produced by the country, as to whether it is in excess, or otherwise; it gives you some idea of what may be expected.

Q. What do you mean when you say as to whether it is in excess, in excess of the demand?

A. It may be in excess of the demand—at the present time the demand is in excess of the production in this country.

Q. Now, Mr. Addicks, do you make your purchases of oil dependent upon the amount of the supply of gas oil that you have on hand,

or do you make your purchases based upon the apparent quantity of supply?

The Master: You mean based on the requirements?

Mr. Hyatt: No, based on what he has on hand, or does he defer it until such time—that is, does he defer it until the supply is about out—

Q. Or do you watch the amount of supply available and attempt to purchase at that time?

The Master: I thought Mr. Addicks testified that he makes his oil contracts at stated periods every year without regard to how much is on hand.

Mr. Hyatt: Just pardon me. I want to get from Mr. Addicks this fact, as to whether, when he purchases, he marks the time 408 of his purchase by the amount of oil that he has on hand or whether he marks the time of his purchase by the quantity of gas oil available in the market.

The Master: Well how about that, Mr. Addicks?

The Witness: We mark it as at the expiration of our contract, and at the expiration of our contract we would endeavor to have, if the market was falling, we would endeavor to have as little oil on hand as possible; if the market of oil is rising, we would endeavor, at the end of that period, to have as much oil as possible.

The Master: But the answer to Mr. Hyatt's question I think is, when your contracts expire, you have to make contracts for additional oil based on what probable requirements for the following period of time you would need irrespective of the amount you have on hand or what the market condition is.

The Witness: Yes, that is true. Our amount on hand is insignificant as compared with our requirements, although you couldn't have much knowledge on the situation.

The Master: I suppose you make contracts whenever you can, depending on the rise or fall of the market?

The Witness: Yes. When we were getting oil at a low price, I made the contract for as long a period as the company would make the contract. On the other hand, in these last two years, with 409 the higher prices of oil, I may only have made a six months' contract in order to take advantage of any fall in prices if it should develop during that period of time.

Q. I suppose, Mr. Addicks, that you heard that the Gulf Refining Company had a large amount of gas oil on hand and desired to dispose of it immediately, would you, notwithstanding the supply of gas oil you have on hand at the present time, endeavor to make a contract for the gas oil that the Gulf Refining Company had, would you do that now?

The Master: For the spot oil, you mean?

A. We would not be in position to take spot oil ordinarily—

Q. Would you now?

Mr. Ransom: Let him finish his answer.

Q. I want to know what you would do now, at this time, at the present moment.

A. That would depend upon conditions—

Q. Just state what you would do now.

The Master: As I understand Mr. Hyatt's question, it is this: Suppose I came along to you now for the Gulf Refining Company and said that I had 10,000,000 gallons of oil of the kind that you want, at a price less than you are paying, could you take it off my hands right away?

The Witness: No, because my contract would not permit me to do that today.

Q. Wouldn't it be a matter of provident business management on your part to take that oil and store it at the present time, considering what you testified before as the state of the market in respect to quantities?

410 A. If we had storage, yes, it might be a wise thing to do.

Q. Would you do it? I want to get a direct answer to that question, under all the circumstances that you have testified to here this morning?

The Master: I understood the witness to say he could not do it.

Mr. Hyatt: The mere fact that he has a contract would not prevent him from buying elsewhere.

Mr. Ransom: The City of New York would not let him have the storage facilities.

The Master: Does your contract prevent you from buying oil elsewhere, Mr. Addicks?

The Witness: The contracts heretofore have provided that the supply should be all the oil used for enriching purposes.

Q. Don't you think that is a very extraordinary contract under the market conditions to make?

The Master: Just a moment. How about the existing contract?

The Witness: I will have to look at that; I will have to refresh my mind on it.

(Witness examines contract.)

The Master: Is it your argument, Mr. Hyatt, that this complainant company ought not to consider all its requirements for a period of time, but ought to take its chances to buy spot oil in the market from time to time?

Mr. Hyatt: I am trying to develop the facts. You see this contract here about which he has testified obviously puts him out of the market.

411 The Master: That is why I am asking you whether you believe they ought to be in the market continuously for spot oil.

Mr. Hyatt: He is trying to support the wisdom of the system. Let him go ahead and support it.

The Master: I am asking you a question.

Mr. Hyatt: It is not up to me, the burden is not on me.

The Master: I am not putting any burden on you, I am asking you whether it is your judgment or your contention that this company ought not to contract for its requirements for a period, but should stay open in the market to get spot oil from time to time as it can.

Mr. Hyatt: Your Honor, I would rather make the answer off the record, and say simply——

The Master: No, I want the answer on the record.

Mr. Hyatt: I am not testifying as an expert, I am not qualified.

The Master: I am asking you a question.

Mr. Hyatt: I will have to decline to answer the question.

The Master: You are asking this witness a line of questions which would indicate that that is your point. I am trying to get in my mind whether that is your point.

Mr. Hyatt: Yes, sir, that is my point.

The Master: All right, that is all I want to know.

Mr. Hyatt: I am not dealing alone with spot oil in that question.

412 The Master: What are you dealing with?

Mr. Hyatt: I am dealing with this system that he has testified to.

The Master: We are now dealing with spot oil.

Mr. Hyatt: I object to the characterization. I do not want to characterize anything as spot oil.

The Master: Your question, Mr. Hyatt, as I understand it, was this: Suppose the Gulf Refining Company came along and said that they had some oil at prices less than they are paying under the contract, would he take it? That to my mind carries the inference that you think they should be in the market at all times to take spot oil at whatever they can grab it at.

Mr. Hyatt: I want to eliminate this characterization of spot oil, that is a small quantity, whatever it is possible for a man to obtain under the circumstances. This term spot oil may have a peculiar meaning in your mind.

The Master: It has this meaning, so we will have no misunderstanding about it: The Gulf Refining Company today has a million gallons of oil on hand that I can buy if I take it off their hands at a price now. They will not contract to deliver it to me 100,000 gallons a month for ten months at the same price, but will give it to me at that price now. That is what I mean by spot oil, immediate delivery, now on hand, as distinguished from contracts for future requirements and future deliveries. That is what I understand when I am talking about spot oil.

413 Mr. Ransom: The company could not make a contract with the Standard whereby they could get it from the Standard at a given price if the market price is higher, or they could buy it elsewhere if the price is lower.

The Master: The question before us now is whether you are at liberty to go out and get all the oil you can get from other places, taking all you need from the Standard Oil.

The Witness: No, we cannot do that, because it is expressly provided there that if we do not use the quantity specified in the contract that the option remains with the Standard Oil Company whether we shall take the rest of that oil at a *further* period, or whether that quantity shall be cancelled at the end of the period. That does not take care of the shortage situation—

The Master: So your answer to Mr. Hyatt is that if you were offered a quantity of oil by the Gulf Refining Company now you would not be in position to take it?

Mr. Ransom: Your Honor did not allow him to finish his answer.

Mr. Hyatt: I object to that. I don't want the witness's answer characterized in any way. Let him answer for himself.

The Witness: If we used more than that stipulated quantity there is nothing in the contract that I see that would prevent us from buying the oil from any oil company during this six-months period, but I think it would prevent us from buying during 414 the second six-months period if the Standard Oil Company exercises their option.

Q. What is the wisdom of taking yourself out of the market with respect to this second six months' period?

A. We don't take ourselves out of the market. They have the option to supply it at whatever I can buy it for, the lowest price.

Q. Whatever you can buy from them, not from other companies?

A. No, indeed. I am not bound to the Standard Oil Company for the second six months if I can buy elsewhere, but they have the right to have that contract if they will supply the oil at that lower price.

Q. You are interpreting a contract that you have with them, are you not?

A. I am giving you the contract.

Q. Let the contract speak for itself.

A. There is the contract, it speaks for itself. The contract expires at the end of six months, and it remains with me, representing the company, to say that within a certain period of the expiration of the contract whether I want to renew it with them for the second six months.

Mr. Hyatt: I did not ask all this. I move that it be stricken out as not responsive.

The Master: I am going to look at the contract myself.

The Witness: If we don't use the amount of oil specified in the contract—

Mr. Hyatt: I move that it be stricken out.

The Master: Yes.

415 Redirect examination.

By Mr. Ransom:

Q. Have you within the last few days received any offer from any oil company to supply any quantity of gas oil?

A. Yes.

Q. Will you produce it?

(Witness produces letter.)

Q. You produce a letter under date of May 7, 1920, from the Warren Pennsylvania Oil Company?

A. Yes, sir.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial. It is not one of the companies that Mr. Addicks wrote to, and this is just a little scheme here to get before the Court some insignificant company's price on some small quantity, and try to make you believe that the price is way up in the air, when it is not. This would impeach their own testimony. They have brought out the fact that they can buy oil to December 31, 1920, at the price set forth in Exhibit 74.

Mr. Ransom: Fortunately the company has the benefit of such a contract. If it had not it would be paying 14 to 16 cents if it got any gas oil at all.

Mr. Neumann: I object to that on the ground that there is nothing there to indicate that it may not be a spot-oil price instead of a term price. I think the letter itself indicates that it is a spot price. And, upon the further ground that to say the least it is not competent evidence to introduce a letter dated a day or two prior to the testimony here where the witness has testified on direct with reference to these matters contrary to what is contained in that letter.

The Master: I think I had better sustain the objection.

Mr. Ransom: Exception. May I have it marked for identification?

Letter marked Complainant's Exhibit 75 for Id.

Mr. Ransom: I do not see on just what theory your Honor is warranted in excluding it.

Q. This was received by you in the regular course?

A. Yes, sir.

Q. It was not in any way solicited by you, was it?

A. No, sir.

Q. You didn't know it was coming?

A. No, sir, I knew nothing about it.

Q. Mr. Chambers interrogated you regarding the situation of the New York & Richmond Gas Company. Will you tell what you personally know as to that situation?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

The Master: What you personally know about it.

Mr. Neumann: What he personally knows of the situation does not mean anything at all.

417 Mr. Ransom: It ought to, to the representative of the defendant Nixon.

The Master: I have ruled. What do you personally know about it?

A. I know that we are supplying oil to the New York & Richmond company at the present time.

Q. Is that at the request of the defendant Nixon?

A. It was at the request of the defendant Nixon, and with the knowledge from the president of that company that they could not buy any oil anywhere.

Mr. Neumann: I move to strike the answer out.

The Master: I will strike out so much as stated that the president of the Richmond company said they could not buy it anywhere else. I shall allow the statement to remain that it has been supplied at the request of the Public Service Commissioner, Nixon.

Mr. Neumann: I take an exception.

The Master: Was there any reason assigned to you by the defendant Nixon for asking you to supply oil to the New York & Richmond company?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: The defendant Nixon requested oil companies that appeared before him to supply oil, and none of them could supply the oil—

The Master: Were you there?

The Witness: I was at those hearings.

418 By Mr. Neumann:

Q. Were you there on that day?

A. I was there on one day.

Q. Were you there on the day that this statement that you are alleging or purporting to give was made?

A. I heard Commissioner Nixon ask for that from the rostrum personally.

Q. Were you there that day?

A. I was not there the day which we finally agreed to do it.

Q. Were you there the day that statement was made?

A. I heard Mr. Nixon make such a statement.

Q. You still don't answer my question. I asked you whether you were there that day?

The Master: What day?

Q. The day you say the defendant Nixon made that statement?

The Master: Made what statement?

Mr. Neumann: Whatever statement he is alleged to have made.

The Master: Do you not know what statement you are talking about?

By the Master:

Q. You were there at some hearing before Commissioner Nixon?

A. Yes.

Q. You said something before to the effect that Commissioner Nixon had asked various oil companies to deliver oil to the various gas companies, and they said they couldn't do it.

A. I heard Mr. Nixon ask whether there was not some one who could deliver oil to this company, and on the final day—

419 Q. Was this at a public hearing before Commissioner Nixon when he asked that?

A. Yes.

Q. What answer was made to that?

Mr. Neumann: I object to this on the ground it is incompetent, irrelevant and immaterial; that if admissible in evidence at all the record itself is the best evidence, and not what this witness states; and since there was no final order on that hearing there cannot be that record introduced here.

Mr. Chambers: On the further ground that it does not appear that there were any oil companies there.

The Master: That is what I am trying to find out.

Mr. Chambers: I can go out here on the street and call for oil, and I won't get it, because there aren't any oil companies there.

The Witness: The Gulf Refining Company was represented there at the time, because I had a conversation with him.

By Mr. Ransom:

Q. Was the Standard Oil Company of New York there?

The Master: We will let the record stand. Your company is delivering oil to the Richmond company at the request of the defendant Nixon, is it?

The Witness: Yes, sir.

Q. And pursuant to that request of the defendant Nixon, did Mr. Welsh, the President of the New York & Richmond Company, come to see you?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the proper method of proving it.

420 The Master: Objection sustained.

Q. Have you here the form of letter which you sent in 1919 to various oil companies for the 1920 oil?

A. I have.

The Master: He read in the one for 1920.

Q. Let us see the one for 1920.

The Master: I think that is already in the record.

Mr. Ransom: No, I think not. He said it was similar to the one for 1919—

The Master: He read a letter into the record, the one he sent out yesterday.

The Witness: This is last December he is referring to.

Q. This is a copy of a letter which you sent to the Texas Oil Company and the other companies which you mentioned?

A. Yes, sir, they are all there.

Mr. Neumann: May I ask the court when that letter was read into the record? I objected to its introduction here. It was objected to and ruled out.

The Master: Nothing of the sort. A question was asked of Mr. Addicks which called for an answer, and his answer included the reading of the letter.

Mr. Chambers: When, today?

The Master: Yes.

Mr. Neumann: In answer to whose question?

The Master: The substance of the letter was, "Will you please let us know how much oil you have, the grade of it, and your price?"

Mr. Chambers: I don't remember it.

421 Mr. Ransom: I offer in evidence copy of a letter of November 25, 1919, sent by Mr. Addicks to the Texas Oil Company and the other companies.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial and a self serving declaration. This is ancient history, and these inquiries were not made in good faith, because Mr. Addicks says he could not take the oil if they offered it to him.

Mr. Ransom: He didn't say anything of the sort.

The Master: The question now before me is as to an offer of oil to which reference was made on the cross examination of this witness, as to what he would do. Now, he produces a copy of a letter which is referred to on his cross examination, and Mr. Ransom offers it in evidence.

Mr. Neumann: I object to the introduction of this letter upon the ground that no foundation has been laid for it; it has not been properly proven; nothing to show or indicate that it was sent or received; and upon the ground that it is a self-serving declaration; upon the further ground that it is immaterial so far as this particular case is concerned, because the letter on its face clearly indicates that it is for the entire system and not for this company.

Mr. Hyatt: I join in that objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

Letter received in evidence and marked Complainant's Exhibit 76.

422 Mr. Chambers: I move to strike out all of Mr. Addicks' testimony which related to what he overheard at the hearings before Public Service Commissioner Nixon, with the exception of

that part in which he said he was furnishing gas oil to the New York & Richmond Gas Company.

Mr. Cummings: We might have to cross examine him on that entire examination.

Mr. Ransom: I now offer the entire record in case No. 2475, the hearing conducted by the defendant Nixon with respect to the supply and price of gas oil.

Mr. Cummings: You don't claim that what he overheard is competent, do you?

Mr. Neumann: No one knows better than the former counsel for the Public Service Commission, that it is incompetent.

The Master: Motion denied.

Mr. Chambers: Exception.

By Mr. Ransom:

Q. Mr. Addicks, referring to the situation at the present time, if through the use of more gas oil than expected, or through the supply by you of gas oil for the New York & Richmond Company, you need more gas oil than is specified in your present contract with the Standard Oil Company of New Jersey for the present six months' period, do you understand that you have a right to purchase from any other company?

Mr. Hyatt: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained.

Mr. Ransom: They have brought out and created a misapprehension as to this situation, and your Honor did not permit 423 the witness to finish his answer. He described the situation as to what it would be if instead of taking the contract quantity from the Standard Oil of New Jersey they went out and bought oil in substitution from another company, but this situation where they need more gas oil during this present contract period—the present six months period—

Mr. Hyatt: I object to the characterization that they need more gas oil.

Mr. Ransom: Need more gas oil before the 1st of July. The record as it stands leaves the impression that they have not a right to buy it wherever they could get it.

The Master: The record contains the original contract and that speaks for itself.

Mr. Ransom: Your Honor has allowed a lot of cross examination on its provisions.

The Master: Yes, because you did not object to it.

Mr. Ransom: I did object to it repeatedly.

The Master: The record shows what happened.

Mr. Ransom: Exception.

Q. Mr. Addicks, do you know the number of increases, or approximate number of increases in the prices of crude oil, Lima and Pennsylvania crude, that have taken place during the past year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: I will take it.

Mr. Chambers: Exception.

A. No, I cannot tell you that. I know they are continuous,
I see the clippings come along of continuous increases, but I
424 don't know the number.

Mr. Hyatt: I move to strike out the answer as not responsive.

The Master: Motion denied.

Mr. Hyatt: Exception.

Mr. Ransom: That is all.

The Master: Is there anything else?

Mr. Neumann: Yes, I would like to ask him a few questions.

Recross-examination.

By Mr. Neumann:

Q. Mr. Addieks, take Complainant's Exhibit No. 76, the letter just introduced in evidence, what is the total quantity that you ask for there?

The Master: Objection sustained.

Mr. Neumann: I didn't hear any, if the Court please.

The Master: I made it.

Mr. Chambers: Exception.

Mr. Hyatt: Exception.

The Master: You are asking the witness to state the contents of the letter in evidence.

Mr. Neumann: I am asking him the quantities.

The Master: You see that, and the court that reviews my report may see it by looking at the letter.

Q. Outside of this exhibit, Complainant's Exhibit 76, did you send any letter with reference to the requirements of the New York & Queens Gas Company, only so far as its supply of oil is concerned?

Mr. Ransom: I object to that as fully covered.

425 The Master: I will allow it. It is perfectly clear, I think.

A. No.

Mr. Neumann: That is all.

(Witness excused.)

Mr. Hyatt: I notice a mistake here on page 355 of the record. It says there are now new dwellings being erected in this locality for residential purposes. That should be changed to read, "there are no new dwellings being erected in this locality."

The Master: Yes.

GEORGE E. Woods, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Woods, where do you live?

A. Long Island City.

Q. What is your connection with the New York & Queens Gas Company?

A. Consulting engineer.

Q. Are you now connected with the Consolidated Gas Company?

A. I am.

Q. In what capacity?

A. Assistant chief engineer and engineer of manufacture.

Q. How long have you been connected with or employed by the Consolidated Company?

A. With the Consolidated since March, 1891.

Q. In what capacity were you first employed by the Consolidated?

426 A. Engineer of manufacture.

Q. Do you hold at the present time any relation to any other gas company? If so, what?

A. I am chief engineer of the Standard Gas Light Company; Assistant chief engineer and engineer of manufacture of the Astoria Light, Heat & Power Company.

Q. How old are you?

A. Fifty.

Q. Prior to your connection with the Consolidated Gas Company were you connected in any other capacity with the New York & Queens Gas Company or with its predecessor company?

A. I was at a time Vice-President of the New York & Queens Gas Company.

Q. That was before your connection with the Consolidated?

A. No, it was before the Consolidated had anything to do with the Queens Company.

Mr. Neumann: Why not fix the time?

Q. Can you tell about when that was?

A. I would not like to state. My first connection with the Queens Company I think was along about 1901.

Q. What has been your experience and training in connection with the gas business from the time you started in in that field up to the present time?

A. I started in the gas business in March, 1884, in the coal gas plant at Evansville, Indiana. I was at that plant for five years. In 1889 I went to the Detroit Gas Company—

Q. What did you do at Evansville, what were your duties?

A. I went there as a boy. In five years I did practically everything around the gas works.

427 Q. Made gas?

A. Made gas, shoveled coal, filled purifiers, made drawings and plans for a new gas works to be built at Paducah, Kentucky, I went down there and started it up and put it in operation.

Q. In Evansville did you lay mains and services and the like?

A. I did.

Q. And from Evansville where did you go?

A. To Detroit, Michigan, as assistant superintendent of the Detroit Gas Company, where I had charge of the manufacture and construction around the plant.

Q. That is, you had charge of both operation and construction?

A. I did.

Q. During your period of employment with that company did you also install water gas apparatus?

A. We did.

Q. You then had charge of both coal and water gas manufacture and operation there?

A. I did.

By the Master:

Q. How many years have you been with the Consolidated?

A. The Consolidated itself, since 1901.

Q. That is over nineteen years?

A. Yes.

Q. What have been your duties there during those nineteen years?

A. For the Consolidated I have been engineer of manufacture in charge of all their operations in manufacturing primarily—

428 Q. Tell us everything you have been doing for the last nineteen years, so far as your connection with the gas industry is concerned?

A. During the nineteen years, at the same time I have been chief engineer of the Standard Gas Light Company and have had charge of the operation and construction of that company. My duties with the Consolidated Gas Company primarily have been in charge of the operation of their plants.

Q. The making of the gas.

A. The making of the gas, and except in the absence of the Chief Engineer I would perform the duties of an engineer.

Q. What would that be?

A. In charge of the mechanical department of the company.

Q. Give us that a little more in detail, just what you would have to do when acting as chief engineer?

A. Such duties as would devolve upon a chief engineer in so far as the construction of work had to go on, the approving of bills, the recommendations of things which out to be done in the mechanical line in the operation and construction of the plants.

Q. Use judgment as to the cost of construction?

A. That is right.

Q. And as to the necessity of construction?

A. Yes, sir.

Q. And the time required to construct?

A. Yes, sir.

Q. In addition to which you had to do with the actual making of the gas?

A. Yes.

429 Q. And looking at the material?

A. Yes.

Q. And handling the material?

A. Yes, sir.

Mr. Hyatt: Did he ever draw up any estimates of cost of construction?

The Witness: I have.

Mr. Hyatt: How many times?

The Witness: I cannot recall the number of times.

Q. A number you mean?

A. Yes.

By Mr. Ransom:

Q. For example, in connection with the Standard Gas Light Company, as chief engineer, you had charge of the construction of additions to the plant, the laying of mains and the like?

A. During my connection with the Standard Gas Light Company I laid forty per cent of their mains that were laid, and increased the capacity of their plant probably sixty or seventy per cent in that time.

The Master: I take it, Judge Ransom, that you are calling Mr. Woods as an expert?

Mr. Ransom: Yes.

The Master: With reference to what particular branch of the case?

Mr. Ransom: Well, principally with respect to the cost of manufacture.

The Master: Anything else?

Mr. Ransom: I think not.

Mr. Hyatt: I shall object to him so far as he has gone, from testifying in that field, your Honor. I do not think he is qualified.

The Master: I think the objection is perfectly ridiculous.

430 Mr. Hyatt: Cost of operation now is a technical matter.

The Master: Any man who has been employed for twenty years or more in the actual production of gas is qualified to tell us about it.

Mr. Hyatt: There is a technical side to that. I do not want to be captious at all, but I don't think he is shown to be qualified on the cost of operation.

The Master: I will rule out that any man who has been actually making and producing gas—

Mr. Hyatt: He does not show that he has any knowledge of the cost of material and labor or anything of the kind.

Mr. Ransom: I will ask him a few more questions, if your Honor please.

Q. Were you for some time general manager of the company in Little Rock, Arkansas?

A. I was.

Q. There did you personally manage the enterprise and keep its books?

A. I did.

Mr. Neumann: Why not fix the time?

The Master: Well, it was prior to 1901?

The Witness: Yes.

Q. During the time that you have been with the Standard Gas Light Company, and with the Consolidated, and the Astoria Company, are the gas records of those companies under your continuous observation?

A. They are.

Q. Is it part of your duties to make analysis of those?

A. That is part of my duty.

431 Q. To observe the actual result of operations in the plants?

A. That is so.

Q. You take experimental tests from time to time?

A. Yes, sir.

Q. Of methods of operation?

A. Many of them.

The Master: Do you have to do with the employment of labor?

The Witness: Yes, sir.

The Master: Do you know what you have to pay them?

The Witness: I do, and generally have to fixe the rate.

Q. That is, in general you are in charge of the rates of pay, and the general oversight of the labor forces of the Consolidated Company and the Astoria Company?

A. That is so.

Q. And are you consulted about these things with respect to the New York & Queens Company?

A. I am.

Q. You have been familiar with their plant for how many years?

A. Since 1901.

Q. Do you from time to time observe at the plant their operating conditions and results?

A. Yes, sir.

The Master: How often do you visit that plant, Mr. Woods?

The Witness: Recently I have been so busy that I have not been there as often, but every month or six weeks.

432 Q. And their operating figures are under your constant analysis?

A. They are.

By Mr. Hyatt:

Q. The cost of labor, Mr. Woods, is that about uniform with respect to certain kinds of labor in all gas works?

Mr. Ransom: I object to the question. It has nothing to do with his qualifications.

Mr. Hyatt: I want to test his knowledge.

The Master: The question will not be allowed.

Mr. Hyatt: Exception.

The Master: The Master is satisfied from what the witness has said that he is a competent expert.

Mr. Hyatt: He is partially qualified, I will concede that——

The Master: On the general gas making industry, and I am going to accept him as such without further waste of time.

Mr. Hyatt: Exception.

Mr. Neumann: That inures to the benefit of all defendants?

The Master: Certainly. There must be somewhere or sometime in this case when counsel will concede that day is day and night is night.

Mr. Hyatt: I object to that. I do not want to be captious at all, but this is technical information we are after, and I think the witness should qualify thoroughly.

The Master: I say it is perfectly ridiculous to even suggest that a man who has been in actual charge of the operation of the plant of the Consolidated Gas Company, and of the Astoria Light, Heat & Power Company, and this company and the Standard Company for over twenty years, with the responsibility that this man has had, according to his sworn testimony here, is not competent—I say that is a ridiculous position to take.

Mr. Chambers: Do you think that a lawyer engaged in practice for twenty years makes him a lawyer? I don't.

Mr. Ransom: With some it does not.

The Master: A man who has practised law for twenty years is competent to testify as an expert on matters of law, I don't care how good or bad he is.

Mr. Neumann: He may be on certain branches of the law, but he may have specialized, and that may be true of this witness.

The Master: Yes, but he has conducted both coal and water gas plants.

I suppose you have handled both coal and water gas plants?

The Witness: Yes, sir.

The Master: The Astoria plant has both coal and water gas?

The Witness: It has.

The Master: And prior to your connection with the Consolidated you handled both coal and water gas?

The Witness: I did.

The Master: And you have watched the development of the industry for the last twenty or thirty years?

The Witness: I have, and visited most of the large plants abroad.

The Master: Go ahead and ask him.

434 By Mr. Ransom:

Q. This plant of the New York & Queens Gas Company manufactures about how many million cubic feet of water gas on the daily average?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper method of proving it.

Mr. Ransom: It appears from other documents.

Mr. Hyatt: It is not connected up, and the foundation has not been laid for it.

Mr. Ransom: I will withdraw the question, because it appears from exhibits already in evidence that it is about a million cubic feet of water gas on the daily average.

Mr. Neumann: The difficulty with that is that we have not the exhibits.

Mr. Ransom: Of course you have. You have had them for weeks, showing both 1918 and 1919.

The Master: Proceed.

Q. Mr. Woods, have you at my request prepared a statement giving the details of the quantity of materials and the quantity of labor, and the like, required for the manufacture of a million cubic feet of carbureted water gas on the daily average, of the quality to meet the statutory requirements within the City of New York?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The question presupposes no particular plan, it is hypothetical and not based on anything proven in this case.

The Master: That objection will be overruled. Is there a statutory requirement for this company?

435 Mr. Ransom: Yes, sir.

The Master: What is that, 22 candle power?

Mr. Ransom: 22 candle power, contained in the same statute.

(Question read.)

Mr. Neumann: You mean that is an estimate of the cost of furnishing gas of 22 candle power—that is a technical question. The witness is not qualified in that particular field to give an answer to that question.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

A. I have.

Q. Is this such statement?

A. It is.

Q. In the first column of this statement you have shown the various items of materials, such as coal and oil and the like.

Mr. Neumann: I object to it on the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving that statement, by reading from it.

Mr. Ransom: I haven't read anything from it, I am simply identifying the title.

Mr. Neumann: The statement will probably speak for itself when it gets into evidence, if it ever does.

Mr. Chambers: I object to that on the ground that he is going into a paper which is not offered in evidence. I am waiting to object to that paper if he seeks to offer it. He has not attempted, in my judgment, to ask any questions about that that are objectionable. When he does I am going to plant my objection in 436 the record, with the usual exception, I suppose.

Mr. Hyatt: The question in my mind is whether this witness is qualified to draw up such a statement.

The Master: Well, the question now is, in the first column you have shown the material. I will allow that question.

Mr. Neumann: That is all right as long as he does not specify them.

A. Yes, sir.

Q. And in the second column you have shown the quantities of the different kinds of materials?

A. That is right.

Q. And in the case of labor you have shown the rate of pay per day?

A. That is right.

Q. In the first column under the category of labor you have shown the number of men of the different kinds of employees under gas-making labor, and repair labor.

A. That is right.

Q. In the third column with respect to materials, you have shown certain prices per unit of material?

A. That is so.

Q. From what source did you obtain those prices?

A. From vouchers of the New York & Queens company.

Q. And in the next column you have shown what you describe as the total cost per thousand cubic feet of each of the different classes of materials and of labor?

A. If that is the column.

437 Q. And in the next column you have expressed that in terms of quantity of materials per thousand cubic feet.

A. The column that you speak of now, as I recall, represents the amount of money expended to make a million feet of gas. Is that right?

Q. Yes, that column. Then the next is the material per thousand cubic feet, and the last column is the cost in cents per thousand cubic feet?

A. That is so.

Q. For each of the different classes of materials and of labor?

A. That is right.

Q. And you state that cost first in terms of cents per thousand cubic feet of gas made?

A. That is right.

Q. And then in terms of cents per thousand cubic feet of gas sold?

A. That is right.

Q. Upon the basis of what percentage of gas unaccounted for?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Master: I will let him state.

Mr. Neumann: Exception.

A. 10 per cent.

Q. Does the New York & Queens company use a high pressure transmission system in supplying any portion of its territory?

A. They do.

Q. That is the so-called Douglaston Extension area?

A. That is right.

Q. Is that necessary?

438 A. It is necessary, yes, sir. You have got to have high pressure distribution for small mains to get it there, or a large expenditure of money to deliver it under low pressure.

Q. The Douglaston district of this Company's territory is a remote district?

A. That is right.

Mr. Neumann: I move to strike out the word "remote." He can indicate how far it is from the works. "Remote" does not mean anything.

The Master: I will let it stand, and then have him say how far it is.

Q. Do you know about how far it is from the works?

A. Well, about how far; I should say four miles.

Q. And about how far is it from the so-called Flushing district?

A. Well, you run from the Flushing district into the Bayside district, and then beyond that going out Broadway into the Little Neck and Douglaston section to the City Line.

Q. It goes across a meadows?

A. That is right.

The Master: Is this based upon the New York & Queens plant, or some other plant?

The Witness: This is based upon a plant of about the capacity and location of the Queens plant, operating as under the conditions as they would operate at the Queens plant.

The Master: It is practically your testimony as to what the Queens plant ought to do, is it?

439 The Witness: I would say that the Queens plant, in my judgment, under good operating conditions, would produce a result about like that.

Mr. Hyatt: Is this gentleman a bookkeeper or accountant at all.

Q. This use of the high pressure transmission system requires the use of more or less boiler coal?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and on proper foundation laid for it at this particular time.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. What is the answer?

A. It requires more boiler fuel.

Q. That is, a greater quantity of boiler fuel is required for sending gas out under a high pressure transmission system than would be required under the ordinary pressure condition?

Mr. Neumann: Objected to on the ground it is repetition, already covered by the witness' last question and answer.

Mr. Hyatt: I do not like the form of the question; it is leading.

The Master: That is overruled.

Mr. Neumann: Exception.

Mr. Hyatt: Exception.

A. Yes, it requires a greater amount of boiler fuel, in that the gas that is delivered under high pressure must be put through pressure pumps for the purpose of making delivery, and that requires power, which in turn takes steam.

Q. What are the factors which go to make up and produce what is called unaccounted-for gas?

440 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it at the present time.

The Master: Overruled.

Mr. Neumann: Nothing shown that there is any unaccounted-for gas.

The Master: Overruled.

Mr. Neumann: Exception.

A. By slow-consumers' meters, condensation in mains, leaks in mains and services, differences in temperature at which the gas is registered at the consumers'—

Mr. Neumann: What is that last, Mr. Woods?

The Witness: The difference in temperature at which the gas is registered at the consumers' meters, below 60 degrees.

Q. That is, the gas is registered at the company's works as of what temperature?

A. It is corrected as of 60 degrees.

Q. And in the consumers' meters it may be of differing temperatures?

Mr. Neumann: That is objected to, on the ground it is incompetent, irrelevant, immaterial, and a conclusion of examining counsel. The witness's answer speaks for itself.

The Master: Overruled.

Mr. Hyatt: Your Honor, that does not mean anything, because the consumers' premises may be above 60 degrees or below 60 degrees. Until we can find out what the consumers' premises were, we have no basis for making any determination of that kind.

A. It may be and is.

Q. Have you stated all the factors which now occur to you?

A. Just for the moment I think I have.

441 Q. Is it your experience that there always is a margin of difference between the quantity of gas made and sent out and the quantity of gas which goes through the consumers' meters as sold?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes, there always is a difference.

Mr. Cummings: He does not know how to account for it.

Mr. Ransom: He has accounted for it.

Q. Is it your experience that this loss of gas or gas unaccounted for is a higher or a lesser percentage in the case of a company serving a territory which may be described as suburban, than it is in a company supplying a more closely-built-up area?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it, nothing here indicating whether this company serves in a suburban or a closely-congested district, or not.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. It would be more.

The Master: Is this a closely-built-up section or is it a suburban section?

The Witness: It is a suburban section, your Honor.

Q. That is, the percentage of unaccounted-for gas is greater as the number of services per mile of mains is smaller?

Mr. Chambers: Objected to.

The Master: Overruled.

Mr. Chambers: Exception.

442 A. Services and sales per mile of main. All those things would affect any percentage, because whether it is a leak in a service or a leak in a main, the leakage would be no greater if you were putting ten million through a year or three million, that is so far as the particular leaks are concerned. In that way the actual leakage would be more in a section where the sales per service and per mile of main were less than in another section served.

Q. And the unaccounted-for gas would be greater expressed in terms of percentage because figured on a smaller base?

A. That is right.

Q. And in the case of what might be called a scattered area with smaller mains, does the gas move through the mains or tend to move through the mains more slowly and thereby produce greater condensation?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown with reference to that as far as this particular company is concerned.

The Master: Overruled.

Mr. Neumann: Exception.

A. That is so, and that to some extent has an effect upon the candlepower. It has a little more oil on that account.

Mr. Hyatt: I move to strike it out.

Mr. Neumann: I move to strike out the witness' reference to candlepower; it is not in response to the question and is uncalled for.

443 Mr. Hyatt: The only thing called for was the question of condensation, and candlepower was not included in the question. I move to strike that out.

The Master: I will not strike it out because it simply comes out with another question, and it is a waste of time to strike it out now.

Mr. Hyatt: This man does not know anything about candlepower as far as this record is concerned, or anything to indicate the candlepower has been raised.

Mr. Cummings: They can assign some reason, perhaps, but he simply knows it is not there, that is all.

The Master: I disagree with you.

Q. Mr. Woods, taking into account all of the factors known to you and appearing with reference to the New York & Queens Gas Company, do you consider 10 per cent of gas made as the percentage of gas unaccounted for a reasonable or an unreasonable condition?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Hyatt: And nothing shown here as to his experience with other companies.

Mr. Neumann: It is not shown as within this witness' qualifications, not the subject of opinion testimony, and highly speculative.

Mr. Hyatt: In this particular field he has not qualified, your Honor, as I remember it, as to the unaccounted for gas of other companies.

The Master: Objections overruled.

Mr. Neumann: Exception.

444 The Master: Any man who has run a gas plant for twenty years knows something about other gas plants.

Mr. Hyatt: He has been with the company for twenty years, but I do not know that he had anything to do with unaccounted for gas of other companies.

Mr. Chambers: We should try this case on the facts in it.

Mr. Neumann: He may know something about congested districts, but he does not know—

The Master: He has been connected with this company since 1901.

Mr. Chambers: Well, as to the unaccounted for, what is the use judging from his experience in other companies? You are going to judge this case on the experience with this company.

The Master: I think so, but I will take this witness' opinion.

Mr. Chambers: What does it show from 1906 down to date as an average?

The Master: I do not know yet.

Mr. Hyatt: It is a very easy way to prove a case, your Honor, in the absence of any particular records.

Mr. Neumann: We have not a large case here, we have a case where they can prove the facts, and the law requires they must prove them beyond a reasonable doubt. This is an important issue in the case, the unaccounted for gas.

The Master: I know it. I understand how important it is, and that is why I welcome the testimony of a sworn witness, who swears that 10 per cent is or is not reasonable, so that you can cross-examine him and show that he is wrong about it. I would rather rely on that than on the books.

445 Mr. Hyatt: I would rather find out the extent of his knowledge.

The Master: You will have plenty of time for that.

Mr. Chambers: Exception.

By the Master:

Q. Is it or is it not a reasonable loss?

A. A reasonable unaccounted for, your Honor.

Q. You think it is?

A. I do.

Mr. Hyatt: The witness in the Consolidated case said it was otherwise.

By Mr. Ransom:

Q. Mr. Woods, in connection with the making up of this statement have you also prepared as to each of these items—

The Master: Let me interrupt you. I have looked at that supplemental memorandum that he has got there, and I think the best way to bring it out is by question and answer. It is not long; ask the questions to bring it out. I have taken a short cut where there has been a long complicated statement, and this is so short I think we better get it on the record.

Q. Mr. Woods, in the operation of a water gas plant such as that of the New York & Queens Gas Company, producing on an average approximately a million cubic feet per day—

Mr. Neumann: One moment. I move to strike out from that question the words "approximately a million cubic feet." There is nothing here shown in the present state of the record to indicate that.

446 The Master: May be he will get it in a future state of the record.

Q. (Continued.) How many pounds of anthracite generator fuel would be required to produce a thousand cubic feet of gas?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial; it is based on an hypothesis. We can prove the facts here by competent evidence directly showing what the experience of this particular company was.

The Master: Yes, we will get that, too; but I want Mr. Woods' testimony on it.

Mr. Neumann: I except to your Honor's ruling.

Mr. Hyatt: Exception.

Mr. Chambers: Exception.

The Master: We are talking about this particular plant.

The Witness: I understand.

The Master: How many pounds of generator fuel would it take to produce a thousand cubic feet of gas?

A. About 37 pounds of generator fuel would be required, of which about 34 pounds would be used in the generator and 3 pounds would be fine screenings which could be used for boiler purposes.

Q. That is small and unsuitable for generator purposes?

A. That is right.

Q. As a result of handling and other facts?

A. That is right.

Q. How much anthracite boiler coal or its fuel equivalent would be required?

Mr. Chambers: Same objection.

447 A. About 22 pounds, 3 pounds of generator fuel and 19 pounds of buckwheat or boiler fuel, or its equivalent in tar or something else.

Q. That is based on the transmission of a portion of the gas under high pressure to the Douglaston District?

A. That is right.

Q. In the matter of cost of fuel, generator and boiler fuel, there is the matter of labor, handling and carting. How does this company at the present time, or as of December 31st, 1919, get its generator and boiler fuel to storage in the plant?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. It may not be within the province of this witness to testify to that.

The Master: Overruled.

Mr. Neumann: The station superintendent would probably be the best witness.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is handled by stevedores from the boat, into automobile trucks, and delivered into the plant yard where it is put into storage.

Q. And have you computed a cost per ton of such labor, handling and cartage?

A. \$1.25.

Mr. Neumann: One moment. I move that that answer be stricken out. We ought to be given an opportunity to object in time. That

is objected to on the ground it is incompetent, irrelevant and immaterial, based upon an hypothesis where we may be able to prove the exact price.

The Master: Overruled.

Mr. Neumann: Exception.

448 The Master: Have you figured that cost of handling?

The Witness: I have, at \$1.25.

Mr. Neumann: I move to strike out the witness' answer, \$1.25. His answer that he has figured it is all right, but his figure should be stricken out.

Mr. Hyatt: I object to the witness testifying to the figure.

The Master: I will let it stand as it is, I am not going to have two questions on it.

Mr. Neumann: I take an exception.

Q. Assuming that a new railroad siding and appurtenant coal-handling facilities are installed at this plant, as has been indicated, would this expense of labor, handling, carting, and so forth be increased or decreased?

Mr. Neumann: I object as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. It would be reduced.

Q. About how much; have you figured it?

A. It would be reduced to about 50 cents a ton, I should say.

Q. But that would involve an increase in the investment in land and apparatus?

Mr. Neumann: One moment.

A. It would.

Q. Now with respect to oil, is the fuel efficiency as great in a plant of this size and capacity, making gas under the conditions prevailing at that plant, as in a larger plant operating continuously during the 24 hours?

449 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and assumes a state of facts that have not as yet been proven.

The Master: Overruled.

Mr. Neumann: Exception.

A. No, I would not expect to get the same results at Flushing, operating as they do, as we would in our plants here.

By the Master:

Q. Well, how do they operate over there; I don't know yet.

A. Well, at some periods of the year they may operate for 24 hours of the day; at other periods they will only operate 16 hours of the day.

Q. What periods will they operate 24 hours of the day, during the cold winter months?

A. During the winter months.

Q. At the peak demand?

A. At the peak demand.

Q. And when do they get down to 16 hours?

A. Well, they will get down there in the spring, possibly, or in the summer or the fall. Their summer consumption there is about as much as in the spring and fall, because—I have not seen the figures lately, but as I recall, April or September are probably their lowest months, and they are just about where they are leaving off furnaces and going into the other, and there the load is just a little bit more.

There are two things that affect both coal and oil average in respect to a plant like Flushing, where it is partly shut down, the radiation losses from the machines affect your coal average, because you have that loss going on while the machines are down. The making up period in the morning requires a little more time in order to get a good fire condition for your oil, and another thing that always operates against a plant of that kind is where you get a cargo of coal that may be bad, of 600 or 700 tons, you have a period of time when you have to operate under a poor fire condition.

450 So I think you would find in the operation of the Flushing plant or any plant operating in that way, that the coal will run anywhere from 32 to 40 pounds, depending on the character of coal they get, which they must use up in a larger plant, and you would not have that, the coal would last you only a few days, or you would mix it up with other coal. As soon as you have a bad fire condition, your oil efficiency is affected.

Mr. Neumann: I move to strike his answer out. Are you finished, Mr. Woods?

The Witness: Yes.

Mr. Neumann: I move to strike the witness' answer out on the ground it is based on assumptions and presumptions.

The Master: Objection overruled.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. That is, a poor quality of coal increases the—

Mr. Hyatt: I object to that.

Mr. Neumann: I object.

A. A poor fire condition will always affect the oil results.

Mr. Chambers: I move to strike that out as argumentative.

The Master: I do not think you need go over that again.

Q. Has the coal during recent years oftentimes been of inferior grade?

451 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Chambers: The witness has not any knowledge on the subject.

The Master: I am going to find out.

By the Master:

Q. Have you kept in touch with the quality of coal delivered at Flushing?

A. Yes, I have, your Honor.

Q. To what extent?

A. Why, we have an analysis of their cargoes and a knowledge of the results from the operations of their various cargoes.

Q. You are watching that all the time, are you?

A. All the while. I get reports from Flushing the same as I do from the other companies.

Mr. Ransom: And some parts of their coal at least are taken to Flushing from the Astoria?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it, not by what this witness—

Q. Do you know?

A. Yes.

Q. Have you seen it?

A. We have shipped them coal.

Q. Have you seen that done?

A. I have.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. In the operation of this Flushing plant—

452 The Master: When you speak of the Flushing plant you mean the plant of the complainant company.

Mr. Ransom: The New York & Queens.

The Master: Let us have that clear on the record. When we talk about the Flushing plant, Mr. Woods, we mean the plant of this particular company.

Q. There is no other plant in Flushing, is there?

A. There is not.

Q. Is it true that during portions of the year the second machine is run only part of the time?

Mr. Hyatt: I object to that. I do not know how many machines this company has.

Mr. Neumann: There may be a dozen.

By the Master:

Q. How many machines are there?

A. There are three machines, your Honor.

Mr. Neumann: That is better.

Q. When you are running it sixteen hours, how many machines do you run?

A. It would depend on whether they have two seven foot six machines and one eight foot six. In some periods of the year they would probably run sixteen hours on the one machine.

Q. Which one?

A. On the larger machine. It would require two machines to be operated, two of the smaller machines, at least sixteen hours to supply that business, and possibly sometimes during the winter they might require one of the large ones and a small one to take care of the load.

By Mr. Ransom:

Q. During part of the day?

A. During part of the day.

453 Q. And does the running of a machine during only part of the day tend to increase somewhat the quantity of oil used?

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

Mr. Ransom: Quantity used per thousand?

The Master: Overruled.

Mr. Neumann: Exception.

A. It has an effect upon it in getting it in condition in the morning, or whatever time they start up. There is some slight loss in efficiency in that result. It is not very great.

Mr. Neumann: I move to strike the witness' answer out.

Mr. Hyatt: There is nothing very definite or specific about this.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What, in your judgment, to produce a 22 candle power gas on the district of such a plant, is the required quantity of gas oil, on the average?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I would say 4.2 gallons.

The Master: Making what candle power at the works?

The Witness: That would vary, your Honor.

Mr. Neumann: I object to the Master's question upon the ground
454 that the statute provides how the test should be made. How
it is made at the works is not the criterion; it is what it tests
at least a mile from the holder.

The Master: I understand that. Overruled.

The Witness: Well, that would very at times. I think from 23½
to 26 candle power at the works.

By the Master:

Q. Of course, the only way that you can gauge the candle power
test a mile from the holder is by making it a certain candle power
at the works, is it not?

A. That is right.

Mr. Chambers: I object to that.

Q. That is the only way you could possibly figure on what it would
do a mile from the holder?

A. That is right.

Q. As a result of your many years' experience have you figured
what it should do at least at the works, to produce a required candle
power a mile from the holder?

Mr. Neumann: That is objected to as incompetent, irrelevant and
immaterial, because the statute provides where the test should be
made.

The Master: Yes, I understand that.

Mr. Neumann: And the moment we get away from the statutory
requirement, your Honor, we wander very far afield.

The Master: Yes. Well, you know what I think of the statutory
requirement.

Mr. Neumann: That still does not prevent me from making the
objection—making the record.

455 Mr. Hyatt: May I ask the witness whether he has ever
made a photometric test of the candle power since he has been
a gas engineer?

The Master: Yes, I will let you do some questioning when I get
through.

Mr. Neumann: May I have an exception to your ruling?

The Master: Yes.

Q. As a result of your experience, have you any figure as to what
should be the candle power of the gas at the works in order to supply
the statutory requirement a mile from the holder?

Mr. Neumann: Same objection.

The Master: Yes, overruled.

Mr. Neumann: Exception.

A. I have.

Q. What is it?

A. Depending on the conditions, it would be anywhere from 23
to 26 candle power.

By Mr. Ransom:

Q. For a plant of this kind?

A. Yes.

Q. And in this kind of a district?

A. That is right.

Q. Does the fact that the mains are smaller and the distances greater tend to have any effect?

A. It would. In extremely cold weather you might get the candle power at the plant, and not on the district, without having the required candle power. There are other times that your drop would be comparatively small.

Q. In a suburban district such as the New York & Queens Gas Company covers, is there any considerable consumption of gas at night?

456 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. Well, my judgment is—I do not recall now just what the send-out has been for each hour, Judge. Of course, they have the lighting of some of the homes, and for the cooking. They have that. Of course it does not extend greatly into the night, to any extent.

Mr. Chambers: They have that everywhere.

Mr. Neumann: In view of the witness' answer I move to strike it out. It indicates quite clearly that the books themselves, if properly kept, would be the best evidence of that fact, not this witness' guess.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Mr. Woods, in the making of gas by the carburetted water gas method, are there any residuals produced in the nature of tar and drip oil?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; the words "nature of tar and drip oil" should be left out.

The Master: Overruled.

Mr. Neumann: The witness should testify, not the examining counsel.

The Master: Overruled.

Mr. Neumann: Exception.

A. There are.

Q. What would be from your experience the approximate quantity of tar?

The Master: What should be.

457 Q. What should be the quantity of tar produced with the quality of oil now obtainable and being used?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis. The very facts themselves can be proven in a direct way.

The Master: Overruled.

Mr. Neumann: Exception.

A. About sixteen per cent would be a fair average.

Q. That is the tar produced to the oil used would be in the ratio of about sixteen per cent?

A. Sixteen, yes.

Q. How about the drip oil?

A. One and a half per cent.

Mr. Chambers: Just a minute. I want to get an objection in to that drip oil question.

Mr. Neumann: Same objection.

Mr. Chambers: We object on the ground it is incompetent, irrelevant and immaterial, and it is an hypothetical question, without stating what the hypothesis is based upon, and I take an exception.

The Master: Overruled.

Mr. Hyatt: Or what the hypothesis apply to.

Mr. Chambers: I never heard of an hypothetical question without stating the hypothesis. What kind of a machine is it, or who are the operators, and so on. Exception to the ruling.

The Master: Overruled.

458 Mr. Neumann: The vice of this line of testimony, if the Master please, consists in this—that they may by their own books, if properly proven, show these very facts, and yet a witness is allowed to testify to it based on an hypothesis.

The Master: Overruled.

Mr. Ransom: We have already shown it by the books, now we are confirming it by expert testimony.

Q. In the manufacture of water gas at a plant such as that, of this complainant, is there also necessary the use of iron oxide, water and sundry small materials?

A. That is right.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, and sundry small materials is vague, incomprehensive and indefinite, and it should be stricken from the question.

The Master: Overruled.

Mr. Neumann: Exception.

Q. For what purpose is the iron oxide used?

A. Purification, extracting the sulphur, sulphuretted hydrogen, from the gas.

Q. That is, the gas is passed through receptacles containing iron oxide?

A. That is right.

Q. For what purpose is the water used?

A. The water is used for condensing purposes and for boiler purposes.

Q. Have you computed what the cost of this item should be per thousand cubic feet of gas made in a plant of this capacity and kind?

Mr. Hyatt: Objected to.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis. The 459 actual facts are susceptible of proof.

The Master: Overruled.

Mr. Hyatt: We do not know whether the plant runs efficiently, either, as a matter of fact.

A. I have.

Q. What is that cost?

Mr. Neumann: Same objection to that.

The Master: Overruled.

Mr. Neumann: Exception.

A. One and a quarter cents.

Mr. Chambers: How much?

The Witness: One and a quarter cents per thousand.

Mr. Chambers: Is that for water?

The Master: Iron oxide, water and sundries.

The Witness: Iron oxide, water and sundry supplies.

Q. In the matter of gas making labor, have you made up a statement of the number of men required to operate such a plant so as to produce on an average a million cubic feet of gas per day?

Mr. Neumann: If the Court please, that is objected to on the ground it is incompetent, irrelevant and immaterial; the subject is apparently covered by an exhibit heretofore put in evidence by the complainant, Exhibit No. 58, Sheets 1 and 2, and if anything, this may tend to impeach his own exhibit.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Hyatt: I object to it, your Honor, upon the ground that the number of men required to run a plant of this character—460 what does the question mean? Does it mean to run a plant of this character in an efficient way, or some particular kind of company that operates at a very great disadvantage?

The Master: Objections overruled.

Mr. Hyatt: Therefore I object to it, and take an exception.

Q. Have you made up such a statement?

A. I have.

The Master: When a man says that you require a certain number of men, I assume in order to run it efficiently and economically; am I correct?

The Witness: Yes.

Mr. Hyatt: As a matter of fact, this plant might be very inefficient and they may take twice the number of men.

The Master: That is why I am letting Mr. Woods swear that to run it efficiently and economically it will take the number of men that he testified to.

Mr. Hyatt: There is nothing on the record to show that the plant is running efficiently.

Mr. Neumann: That may be the very reason for them introducing this evidence on the basis of an hypothesis rather than from the actual experience of this company.

The Master: We will get the actual experience, too.

Q. Mr. Woods, in your judgment is this plant run efficiently and economically?

A. It is.

Mr. Hyatt: I object to that.

Mr. Chambers: I object to that.

Mr. Hyatt: It calls for a conclusion.

461 Q. Mr. Neumann: He may state the facts to show it is run efficiently.

The Master: I will take the opinion.

Mr. Hyatt: Exception.

Mr. Neumann: Exception.

Mr. Chambers: Exception.

Q. Are you familiar with the rates of pay or compensation of the various grades of gas-making labor of the complainant?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already covered by Exhibit No. 58 introduced in evidence.

The Master: Overruled.

Mr. Neumann: Exception.

A. I am. I think I fixed that.

Q. And the same as to repair labor?

A. Yes.

Mr. Neumann: Same objection.

Q. What employees in your judgment are necessary for the efficient and proper operation of the plant that we have been describing?

The Master: Of this Flushing plant, what kind of repair labor do you need?

Mr. Ransom: I am speaking of gas-making labor first.

The Master: Well, gas-making labor.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, already covered by Exhibits 58 and 59—or Exhibit 58 only.

The Master: Overruled.

By the Master:

Q. You have set out on this statement you have prepared the various kinds of gas-making labor and the number of men needed, have you not?

462 A. Yes, sir.

Mr. Ransom: And the rates of pay.

Q. And the rates of pay?

A. Yes, sir.

Q. As to repair labor, what kind of repair labor do you need?

A. I have set it out here, your Honor.

Q. I know what you have set out, that is why I am asking you. Tell us.

By Mr. Ransom:

Q. What repair labor do you need in a gas works like this?

A. Masons, carpenters, laborers, ironworkers—all kinds of work that you would need around an establishment where mechanical operation of that kind is going on, making repairs of all sorts. Now, a plant such as the Flushing Plant could not afford to keep any such staff of mechanics on hand.

Q. All the time?

A. All the time, because they would not have the work for them. The result is that they have got to bring in at times certain masons to do certain work, certain carpenters to do other work, blacksmiths to do other things, machinists to come in. So that in the ordinary operation in my judgment it would require about two mechanics steadily employed—

The Master: One helper?

The Witness: One helper and two laborers, doing the work around, in the way of repair work.

Q. That is, on the average that would be the number of men steadily employed?

A. About four men steadily employed on repair work.

463 The Master: Or, putting it another way, you believe the cost of repair labor should show as a matter of actual operation about \$23 a thousand?

The Witness: \$23 a day, or 2.3 cents a thousand.

Mr. Chambers: Just a minute, Mr. Woods. I object to that as incompetent, irrelevant and immaterial, not a subject for opinion testimony.

The Master: Overruled. Now get down to repair material.

Q. With respect to repair material, is the cost of repair material for a plant of this size greater or less per thousand than for a plant of 10,000 or larger capacity?

A. It would be greater.

Mr. Neumann: One moment, I object to that on the ground it is incompetent, irrelevant and immaterial.

Mr. Chambers: Not the subject of opinion testimony.

The Master: Overruled.

Mr. Chambers: Exception.

Q. Why?

A. Well, in the first place much of the work, on account of the lack of mechanics around the plant, some work that ordinarily would be done around the plant by the mechanics, is brought in and the cost is more.

Q. That is machine and boiler work?

A. Machine and boiler work. In other words, the units are smaller, and while they wear out in the same length of time, yet the production per unit has been less, so that the unit cost per thousand is as a result of that is more.

461 Q. That is, the wearing parts give way?

A. The wearing down of the pumps, the door frames, the lining, the firebrick lining of the generator, carburetter and super-heater requires not quite as much repair as in a larger machine, but the unit production has been so much less than in a larger machine that the cost of repairs and materials will be more.

Q. First as to repair materials, have you figured what in your judgment the repair material required for such a plant would cost per thousand?

A. Yes, 3 cents per thousand.

Q. What does the item Miscellaneous Works Expense cover?

A. That covers the watchman, janitor, messenger, telephone, gas, electric light, stationery, repairs to the holders, or whatever miscellaneous expense would apply to operation of that kind.

Q. What do you figure should be the cost of that item?

A. About one cent a thousand.

By the Master:

Q. In this column here, Mr. Woods, this ought to be per million, should it not (indicating)?

A. Yes, cost per million.

Q. In stead of per annum?

A. That is right.

Mr. Ransom: I offer in evidence this statement entitled: "Cost to manufacture 1,000,000 cubic feet of carburetted water gas (daily average) of a quality to meet the statutory requirements of the City of New York."

Mr. Neumann: May we have copies of that before it is offered?

The Master: Only that first sheet.

465 Q. Mr. Chambers: Is this it here (indicating)?

The Master: Yes, just the first sheet of it.

Mr. Hyatt: The District Attorney of Queens objects to it as incompetent, irrelevant and immaterial, not binding on this defendant and not within the facts of this case.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

Mr. Ransom: All of these self-constituted representatives cannot talk at the same time.

Mr. Chambers: Well, when the rest of them get through I will start. I object to it as irrelevant, incompetent and immaterial, improper; it is not the subject of opinion testimony. The witness has not shown he is qualified to give any such testimony in regard to this particular plant, and he has not shown he is qualified on prices. It is hearsay, secondary evidence, and based on some hypothetical plant and not an actual plant.

The Master: He is talking about this plant now.

Mr. Neumann: No.

Mr. Chambers: No, this is his own creation now.

Mr. Neumann: Quite the contrary.

By the Master:

Q. All this testimony that you have given has direct relation to this Flushing plant, Mr. Woods?

A. It has, your Honor.

Mr. Chambers: Then we will take it from the books.

Q. All your estimates have relation to the actual operation of the plant?

A. That is so.

466 Q. Or what it ought to do?

A. That is so.

Mr. Cummings: Or one like it.

Mr. Chambers: I do not think those answers are correct to your questions, with all due respect to Mr. Woods. It does not relate to this plant at all.

Mr. Hyatt: It is his idea of what this plant is.

Mr. Ransom: I suggest that we ought to have some formal order on the part of the defendants.

Mr. Chambers: So do I, on the part of complainant's counsel.

Mr. Ransom: They all talk at once like a pack of wolves.

Mr. Chambers: Also he is cumbering up the record with duplication. I thought you directed him to ask these questions, and which he attempted to do. Now he wants to put it in wholesale.

Mr. Hyatt: It is a very short and very ready way of proving a case.

The Master: That is not so at all, Mr. Chambers. There were three pages of notes brought out by these questions, which were explanatory of the figures. Now I am going to take the figures after hearing the objections.

Mr. Neumann: Before making my objection I want to ask the witness one or two questions.

The Master: No.

Mr. Neumann: May I not in order to formulate the objection?

The Master: No.

467 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, shown by the witness' testimony to be based on pure hypothesis, not on this particular plant, and the facts themselves can be proven directly from the books if the books are properly kept; and upon the further ground that these same facts are presumably contained in Exhibit 58 heretofore introduced by the counsel for the complainant.

The Master: The objections are overruled, the paper will be marked in evidence.

Mr. Chambers: I think you ought to exclude the prices. He does not know anything about gas oil.

The Master: He said he knew the prices and saw the vouchers.

Mr. Cummings: Your Honor, have you any idea that these are taken from the books of the company?

The Master: No, I have taken them on the same theory that I took them in the Consolidated Gas case. I do not want to rely entirely on the books as indicating a result, nor do I want to rely entirely on the sworn testimony of the witness' opinion; but when I find, assuming that I am satisfied in this case that the books have been properly and correctly kept, and in due course of business, that those operating records actually show substantially what Mr. Woods says the plant will do, and when there is no other witness to take issue with Mr. Woods as to what a plant like this, or this plant, will do, I am quite satisfied that the figures shown to me, checked

up by operating results, are correct.

468 To illustrate what I did in the Consolidated Gas case, I took Mr. Woods' statement of what he thought it ought to do, I checked it up by operating results as per the books. In some instance I found that the books show slightly less coal or fuel used than the quantity Mr. Woods said ought to be used, and I therefore felt that the operating results appearing from the books, in the light of the sworn testimony given by Mr. Woods, could be relied on, and I did rely on them, and I based my decision on the books themselves and the operating results.

That is what I am going to do here. If when I get the books before me, and Mr. Teele's exhibits, I find that the operating results tally with what Mr. Woods says it will do and should do, and I do not hear any other witness come on the stand and take issue with Mr. Woods on the quantity of coal and oil used—

Mr. Cummings: Why didn't they do that first?

The Master: The books are in evidence; Mr. Teele put the books in evidence. I want his testimony confirmative and corroborative of the books' actual operating results. That to my mind is one way of getting a good result.

Mr. Chambers: I want to say on the record that if we do not challenge Mr. Woods' hypothetical figures and you draw the inference we cannot challenge them—I want to say you will be mistaken, because we rely on the fact that you cannot do this, as Mr. O'Brien says, in capsule form.

469 The Master: All right, you take your chances on that.

Mr. Chambers: We consider it incompetent.

The Master: The record before me is the testimony of Mr. Woods' that certain quantities are necessarily used in the efficient operation of this plant, and if there is not any sworn proof to the contrary, I am going to assume that there cannot be any.

Mr. Chambers: You will be in error if you do that.

Mr. Cummings: Then you shift the burden on to us.

The Master: The burden is on you when Mr. Woods comes in and says that it takes a certain quantity of coal and oil and labor to produce a thousand cubic feet of gas.

Mr. Cummings: Not in a plant of his own creation.

The Master: In any plant—and the books show that it does substantially that very thing, the burden shifts to you to show that it is wrong.

Mr. Cummings: But the minute you let him create a plant in his own mind, that is different.

The Master: The record shows what it is.

Mr. Ransom: This may be marked?

The Master: Yes.

Mr. Hyatt: The District Attorney of Queens County wants to file an objection to this exhibit, on the ground there is nothing shown in the witness' testimony that he is qualified to draw up an exhibit of this kind, or make the necessary computations. He is not 470 a bookkeeper or accountant so far as I have been able to determine from his testimony, and therefore I think it is highly objectionable. Also there is nothing on the record to show, except his bare statement, that this hypothetical plant conforms to this actual plant that the complainant has. I take exception if the Master overrules the objection.

Mr. Neumann: If your Honor please, I want to call your attention to this exhibit. The last line reads "Douglaston Extension under order of Public Service Commission for the First District." I think that is manifestly unfair; there is no order here at the present time.

Mr. Ransom: I will offer the order in evidence.

Mr. Neumann: Counsel for the complainant stuck his head in the door the other day, and then dropped it like a hot coal. Here we have something in the form of a joker. Counsel may claim he has proved that order by that exhibit.

The Master: I do not care whether he does or not.

The paper offered was marked Complainant's Exhibit No. 77, and is as follows:

(Here follows reproduction of statement of cost to manufacture one million cubic feet of carbureted water gas, etc., marked page 470a.)



470a *Cost to Manufacture One Million Cubic Feet of Gas*
Requirement

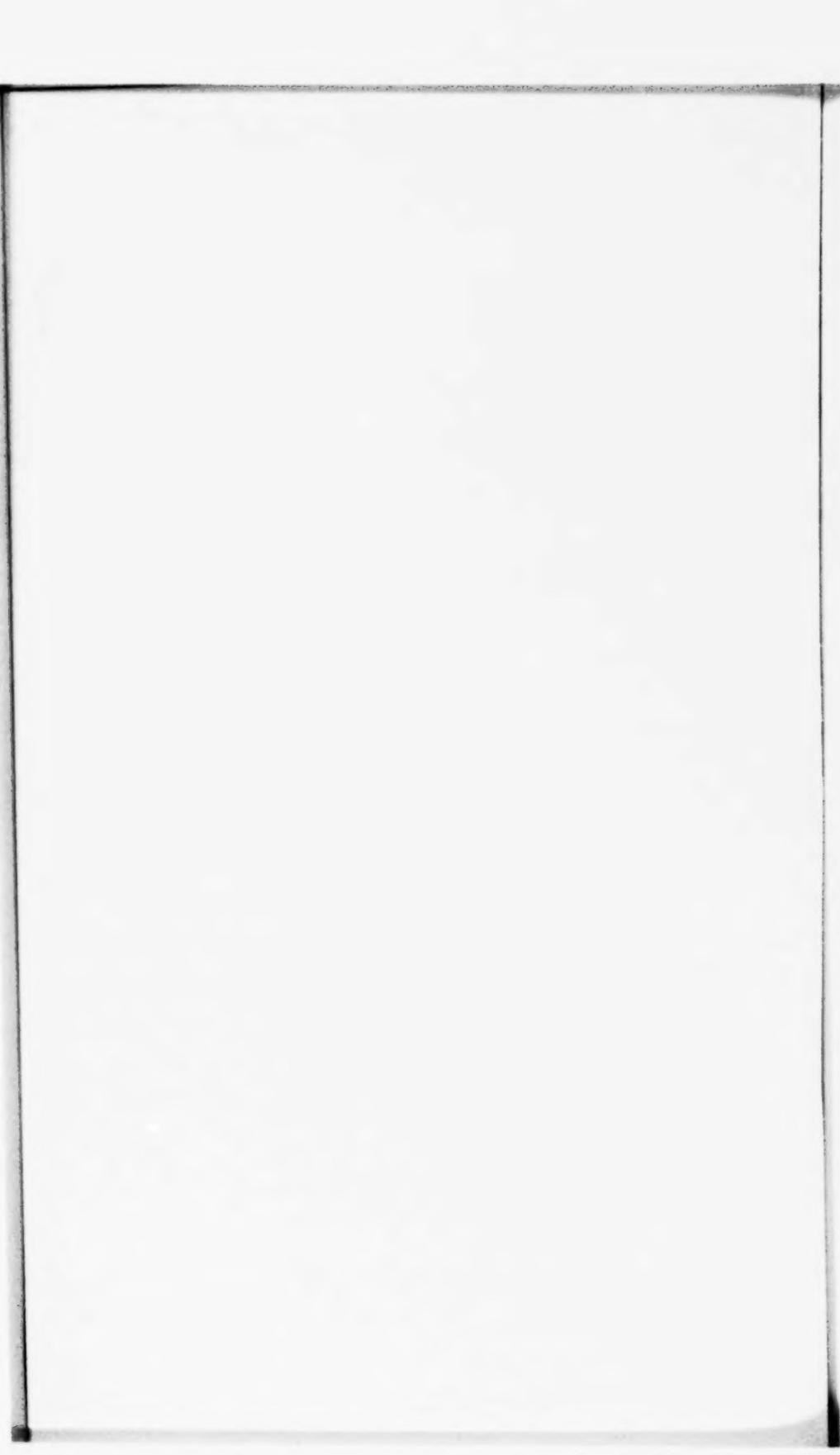
	Quantity.	1
Generator Coal (Anthracite) . . .	15.18 Gr. Ton at	\$
Boiler Coal (Anthracite)	1.34 " "	A
Boiler Coal*	8.48 " "	C
Labor, Handling, Carting, etc., . . .	1.25 " "	C
Total Cost of Generator and Boiler Fuel		
Gas Oil	4,200 Gals. qt.	\$
Tar and Drip Oil Credits.	714 " "	
Net Cost of Oil.		
Net Cost of Fuel (Coal and Oil)		
Iron Oxide, Water and Sundries		
Gas Making Labor:		
1 Superintendent		\$
1 Clerk		
3 Gas Makers	at \$4.64	13
3 Engineers	at 4.93	11
2 Boiler Firemen	at 4.48	8
2 Generator Firemen & Coal Passers	at 4.48	8
2 Laborers (Purification, etc.) . . .	at 4.00	8
Sunday and Holiday Overtime		
Repair Labor:		
2 Mechanics	at 5.50	\$1
1 Helper	at 4.00	
2 Laborers	at 4.00	
Repaid Material		
Miscellaneous Works Expense		
Total Cost of Manufacture		
Unaccounted for Gas (New York & Queens Gas Comp.)		
Cost of Manufacture per M Cubic Feet of Gas Sold . . .		

*Additional Boiler Fuel used on account of Steam used for Heating Service Commission for First District.

retted Water Gas (Daily Average) of a Quality to Meet the Statutory Requirements for the City of New York.

ee.	Total cost per million.	Material per M cubic feet.	Cost in cents per M cu. ft.
44 per Gr. Ton	\$128.12	34.00 lbs. per M	12.81 Cts.
44 " "	\$11.31		
20 " "	52.58	63.89	6.39 "
25 " "		31.25	3.13 "
			22.33
072833 per Gal.	\$305.90	4.20 Gals. per M	30.59 "
0425 " "	30.35		3.04 "
			27.55 "
			49.88 "
			01.25 "
75			
00			
92			
79			
96			
96			
00			
73			
			6.71 "
00			
00			
00			
—			
			2.30 "
			3.60 "
			1.00 "
			64.14 "
ny) 10% of Gas Made.			71.27 "

In Pressure Transmission in Supplying Douglaston Extension under Order of Public



471 Mr. Chambers: You let these exhibits go in with this incompetent statement on them, like this Douglaston Extension, and later on it confuses the Court, and you base a finding on it and it makes trouble for us.

The Master: The trouble is if they would let me select some of the judges they would not be so confused when they get something before them.

Mr. Chambers: I think you were misled in the Consolidated case by the other side's brief.

Mr. Ransom: He was misled in the Consolidated case in finding too low a cost of gas.

The Master: There was nothing in their brief or yours that I did not first check up. The only thing that I found that was of the slightest use was that the Rowland appraisal did not cover some meters and services as well as plants, and I put that in for you. It was the only thing worth while in your whole list of objections.

Mr. Chambers: I did not think you would take anything. You changed the company from "defendant" to "complainant."

The Master: Yes.

Mr. Chambers: I am obliged for that.

Mr. Ransom: I offer in evidence a certified copy of the order of the Public Service Commission in case No. 1856, Matter of the Extension of the Gas Mains of the New York & Queens Gas Company, to serve the Douglaston Area, dated March 19, 1915.

Marked Complainant's Exhibit No. 78.

Recess.

472 Afternoon Session.

GEORGE E. Woods resumed the stand.

Cross-examination.

By Mr. Chambers:

Q. You didn't go over the books of this company, did you, Mr. Woods, to find out the amount of generator coal they are using?

A. No.

Q. Or the boiler coal, or any of these items?

A. I get reports as to what is going on from time to time.

Q. But that is based on somebody else's reports?

A. I didn't go over the books, no.

Q. What exhibit number is this?

The Master: Wasn't this marked as an exhibit?

Mr. Ransom: That is an original copy.

The Master: What is the exhibit number?

Mr. Ransom: Number 77.

Q. But you don't pretend to say that these are based on the actual experiences of this company as shown by their past history?

A. I should say that these closely approximate a plant of that size—the Flushing plant.

Q. But you didn't take their figures?

A. I didn't use their figures; I knew what figures they had and what the results were and knew what could be expected in a plant of this kind.

Q. What did they have for unaccounted for gas?

Mr. Ransom. When?

Mr. Chambers. Any time, 1916.

Mr. Ransom. Objected to as immaterial.

The Master. I will allow it.

473 A. I couldn't recall, I had seen it—I can't recall at the moment—it has been as high as 17 and 18 per cent and it has been down as low as $8\frac{1}{2}$ and 9.

Q. You don't know, then, what the average is covering the last ten years?

A. Not the average, no, I think for 1919 it was about 11 per cent—that is my recollection.

Q. Well that was high, wasn't it?

A. I wouldn't call it low; I think 10 per cent is a good operating condition—I wouldn't call 11 per cent high.

Q. Well, unaccounted for gas is not measured by time, is it?

A. No, it is not measured by time, but it is measured by conditions.

Q. It ought to be just as much in 1906 as it is now?

A. No, no, not at all.

Q. Then it is a variable quantity?

A. It is a variable quantity; weather conditions would have a great deal to do with it.

Q. You can't fix any rules for unaccounted for gas, can you?

A. No, I said an average condition, a good operating condition would be 10 per cent—it might be more than that.

Q. Suppose it should be less?

A. A plant of that size would be extremely good. I don't know of any plant of that size operating around here at lower than 10 per cent; there may be; if there is one, I don't know of it.

Q. Well, this very plant you said was?

A. Yes, I said it has been around $8\frac{1}{2}$ and 9.

Q. Well, there is one?

A. Yes.

474 Q. Don't you know what it is in any of the other plants, say the New York & Richmond?

A. I have seen a case, I wouldn't like to recall it now, I think it was 12 and 13 per cent.

Q. Well, you are just testifying now from recollection?

A. Yes, that is a guess.

Q. It might be less than that?

A. Possibly—I don't recall definitely, although I have seen a lot of them.

Q. As of what date are these quantities and prices here in this Exhibit 77?

A. As I recall, April prices.

Q. April, 1920, prices?

A. 1920, yes.

The Master: And quantity is of what period?

The Witness: As of an average condition. That would vary from time to time. You take an average condition, it would represent about that figure.

Q. When you testified in the Consolidated case, you made your generator coal different than you have made it now?

A. Yes.

Q. That was 32.50 pounds per thousand?

A. That was it.

Q. How do you explain that difference?

A. I explain that because they are not operating all the time 24 hours in the day. There is the effect of radiation, which will affect them to a certain extent, and a variation in the quality of coal that would affect them to a greater extent than it would in one of the larger plants because it had to cover a longer period of time.

475 Q. You are only speaking of one generator, aren't you, in both cases?

A. Speaking of plants. As I testified to it in the final testimony, you will recall, it was estimated on the 10,000,000 foot plant in the Consolidated case.

Q. You think there would be that difference between 32.50 pounds and 34 pounds per thousand.

A. I so testified.

Q. Well, on what do you base that now, Mr. Woods? Why should there be that variance in the generator?

A. Well, as I stated—

Q. You say when they are not in use—assuming they are in use?

A. If they are in use and giving the same grade of coal at both plants throughout the year, with a large plant and a small plant, the difference would not be quite that much; there would be a little more radiation loss, and so forth, in the smaller machine.

Q. Isn't it a fact that it wouldn't amount to very much?

A. No, not a great deal, but I believe, in my judgment, in operating conditions such as they have at Flushing, operating as they do, any plant operating as they do at Flushing, that 34 pounds per thousand would be a good operating condition.

Q. Do you know what they have done in the past?

A. Yes, I know.

Q. I mean this company—how many pounds?

Q. Oh, they have been down to $32\frac{1}{2}$ and been up to 38.

476 Q. According to the grade of coal?

A. According to the grade of coal.

The Master: Don't the other operating conditions enter into that, too, as well as the grade of coal?

The Witness: As I say, when they shut down, of course, that has an effect upon it.

Q. Don't they shut down in a 10,000,000 plant, too?

A. They are operating continually throughout 24 hours in a 10,000,000 plant, generally speaking.

Q. Well, then you penalize the company here for not operating?

A. I don't penalize them; it is a condition that exists.

Q. How often do they operate these three machines in those plants?

A. I don't think that they are required to operate three at any time—they operate two.

Q. Two all the time?

A. No, not two all the time; the larger machine is at times capable of doing the work.

Q. What kind of coal did you figure on here in this exhibit 77?

A. The grade of anthracite we are receiving in the market here.

Q. What grade is that now?

A. It varies. That is the unfortunate part about it, it is not the same.

Q. Was it as good coal as you used when you testified in the Consolidated?

A. I would say that if we got the same grade of coal there wouldn't be that difference.

Q. You say the coal is not as good now?

A. We have had much better coal.

477 Q. And how long has that continued?

A. We haven't had coal that ran high in ash for the last three or four years, Mr. Chambers, and there are times when the clinker formation and so forth makes a lot of trouble irrespective of the quantity of ash.

Q. You are the same George E. Woods who testified in the Consolidated case, are you not?

A. I guess so.

Q. Do you remember that you were asked this question:

"Q. Mr. Woods, do you know how much generator fuel, anthracite, it takes to make a thousand cubic feet of gas?"

"A. I do.

"Q. How much?

"A. 32½ pounds."

A. I did.

"By the Master:

"Q. Is that a recognized quantity?

"A. It is.

"A. By gas engineers?

"A. It is."

A. Right.

Q. That is correct, is it?

A. Yes.

"Q. Is there any dispute about it that you ever heard?

"A. No. You understand, your Honor—

"Q. Different grades of coal?

"A. Different grades of coal. The average amount would be 32 $\frac{1}{2}$ pounds."

A. Yes.

"Q. You get more out of some coal and less out of others?

"A. That is right."

Q. That is correct, isn't it?

478 A. That is right, and I was testifying as to the Consolidated System when I was testifying.

Q. And that applied to water gas?

A. Applied to water gas, yes.

Q. Now you say you had in mind there 10,000,000 cubic feet when you testified in the Consolidated?

A. As I recall it, I testified to 10,000,000 pounds.

Q. Where did you get your prices from?

A. I got that from a voucher, from a recent voucher, from a bill and voucher of the New York & Queens Company.

Q. A 1920 voucher?

A. That is right.

Q. Where is the voucher?

A. It may be in court here.

Q. Did you just pick out one?

A. I just asked for a voucher giving what they were paying for coal of this kind.

Q. You don't know whether they are paying that, do you?

A. Well, I imagine the bill and voucher would indicate that.

Q. And that is the only source of your information?

A. Yes, that is my source of information.

Q. Now your boiler fuel, you got 1.34 here and 8.48?

A. Right.

The Master: That is per gross ton.

Q. That makes 9.82 pounds?

A. Tons—that is the amount required to make a million feet.

Q. In the Consolidated case you testified that it took what?

A. 14.

479 The Master: And in this case you say 22?

The Witness: 22.

The Master: That is a pretty large variance.

Q. Why is there such a variance there?

A. Well, the capacity of the plant would have something to do with it, shutting it down and keeping it warm in the winter time, the radiation loss would be greater with that plant than it would be with a larger plant, and eliminating the question of the gas transmission under high pressure, in my judgment, the fuel per thousand, boiler fuel over there, would be between 17 and 18

pounds without any higher pressure transmission whatever. I think 22 pounds would be a conservative estimate.

Q. Well, in the winter, isn't this company that is the complainant here, aren't they operating continuously?

A. They did operate in the winter time continuously, yes.

Q. That would not apply, then, if they shut down?

A. If they shut down in the summer time, their radiation loss is going on whether the plant is operating or not.

Q. But you have figured that they would not shut down in a 10,000,000 plant?

A. That is right; their boiler efficiency would not be as good—it would be more per thousand.

Q. The boiler coal depends on the quality of the coal, does it not?

A. Naturally it would have an effect upon it.

Q. Depending on the efficiency of the machines?

A. Yes.

Q. The skill of the operator?

A. Yes.

480 Q. How many pounds have they actually used in the last few years over there for boiler fuel to make a thousand cubic feet?

A. I don't recall the figure; I think it is 22 pounds at least—probably a little more.

Q. Did you check it up?

A. I think I have seen the figures—I know I have seen the figures—No, I did not check it up at the time I made it because in my judgment, under the conditions they were operating, 22 pounds would be the least they could get along with.

Q. You did not check it up to see?

A. No, I didn't have to check it up, because I was sufficiently familiar with the situation to take these figures without checking them.

Q. And your figures are based on the record of the company, or the books?

A. No.

The Master: What would seven-tenths of a gallon of water gas tar equal in coal, per pound of coal?

Mr. Hyatt: You mean in heating energy?

The Master: No, in weight.

The Witness: Nine and a half.

The Master: Nine and a half pounds?

The Witness: Yes.

Q. What kind of machines are these, Mr. Woods?

The Master: Just a moment. How do you figure that seven-tenths of a gallon into pounds of coal, what is the equivalent?

The Witness: A gallon of tar worth nine pounds would be 5.6 pounds tar times 1.7.

481 The Master: I see by the exhibit that in the year ending 1919, December 31st, they use sixteen pounds of coal in seven-tenths of a gallon of tar; that would make it over twenty-five pounds?

The Witness: Yes.

The Master: That is pretty high, isn't it?

The Witness: That is what they used. I think twenty-two pounds would be a good operating condition, your Honor.

Q. That is at the present time?

A. At the present time.

The Master: The impression that Mr. Woods makes on my mind, putting it that way, is, that he thinks they ought to have done a little better than the operating records show; isn't that so, Mr. Woods?

The Witness: Well, I believe that twenty-two pounds would be a good operating condition.

The Master: Then twenty-five is not a good operating condition?

The Witness: Well, there may be conditions that would justify; you take cold weather, &c., it might bring that up, or an excessive quantity, but in my judgment twenty-two pounds is a conservative estimate for boiler fuel.

Q. In other words, you say it takes eight more pounds in a million cubic feet of water gas than it does in ten million?

A. That is right.

Mr. Ransom: With the high pressure transmission.

The Witness: Yes.

Q. In your testimony in the Consolidated Gas case, did you have in mind the same kind of machines?

482 A. The same type of machine, but different size.

Q. What size did you have in the Consolidated?

A. Well, we operate ten, eleven and twelve foot machines in the Consolidated and these machines are seven foot six and eight foot six.

Q. It depends on the skill of the operator, the boiler coal you use?

A. When you speak of machines, I thought you were referring to generator apparatus rather than boiler apparatus. The steam boilers in the Consolidated are largely water tube boilers. They have some water tube boilers at Flushing and a few two-return tubular boilers.

Q. In the Consolidated Gas case you testified that labor handling would be .0075 per thousand cubic feet.

A. Right.

Q. And here you have it a dollar and a quarter.

The Master: What was it in the Consolidated?

Mr. Chambers: .0075.

Mr. Ransom: That is a dollar and a quarter a ton.

The Witness: A dollar and a quarter a ton.

The Master: What is it carried out at?

Mr. Chambers: That would be 3.13 cents.

The Witness: Yes, as against three-quarters of a cent in the other case.

Q. How do you explain that wide variance?

A. Because in the case of the Consolidated plant referred to, they were all on tide water where the coal was taken out.

Q. But you didn't base this on any Consolidated plant?

A. No, I said the Consolidated plants referred to were all on tide water where it was drawn right from the boat and put in the pile.

483 Q. You testified in the Consolidated case that you didn't base that on any particular plant?

A. No, I based it on a ten million plant; I said it ought to be on the water front—a plant of that size should be on the water front for economical operation.

Q. And this is not, you say?

A. No, this is not.

Q. Well, how do you go to work to handle this coal?

A. It has to be taken from the barge and put in automobile trucks and carted to the plant.

Q. A distance of how far?

A. Oh, I should say a half a mile.

Q. That is the way it is handled here?

A. That is the way it is handled.

The Master: Isn't this Flushing plant on the water front?

The Witness: No.

The Master: A half a mile inland?

The Witness: Well, I should say, probably—it isn't a half a mile from the water, but probably a half a mile, I don't know the exact distance, from where they would bring it.

Mr. Ransom: No place where there are any piers or bulkheads?

The Witness: No.

Mr. Neumann: Why not let the witness testify?

Q. Isn't it on any navigable water?

A. No. The amount of money involved, however, in the transportation would not justify the abandonment of the plant for the purpose of putting it on the water; the amount expended for the purpose of putting it on the waterfront would not justify in changing from the present location of the plant.

484 Q. Well, it is a badly-located plant, is it?

A. It may have been badly located but it is there.

Q. What did you figure on labor, how much?

A. A dollar twenty-five a ton.

Q. How many men?

A. That was the contract price they got; I didn't take into consideration the number of men.

Q. Isn't it on a railroad, this Flushing plant?

A. There is a railroad, but there is no railroad siding to the plant.

Q. But one could be built?

A. Yes, and probably will be.

Mr. Ransom: It is not on the railroad, the testimony in the case shows.

The Witness: I say it is not on the railroad but by the purchase of some land a siding could be put in.

Q. How far is it from the railroad?

A. Five or six hundred feet I should say—is that right Mr. Spear?

Mr. Spear: About 200 feet.

Q. Then if you had a little siding 200 feet, you would be rid of that transportation or some of it?

A. Yes, with the expense involved in doing that, putting it in.

Q. Supposing the railroad would put the siding in?

Mr. Ransom: Objected to. The company has indicated that they were going to do that when it could acquire the land. We have not yet proved the situation in that respect; the company could not do it until it acquired the land.

485 Mr. Neumann: You just stuck your head in the door, didn't you?

The Witness: They didn't go any further with it.

The Master: Objection overruled.

Q. Then you took that figure of coal-handling from the records of the company?

A. That is right.

Q. And that is not your idea about it?

A. Well, it is my idea because I knew what they were paying for doing that work. I think, under the conditions, it could not be done for any less.

Q. How much was that a year ago, say, or two years ago, that cost?

A. I don't know. I can recall some three or four or five years ago, it was I think fifty cents.

Q. In place of what, a dollar and a quarter?

A. Yes. That is just an illustration, Mr. Chambers, of how things have gone up all along the line.

Q. Well, things are abnormal. That proves it, doesn't it?

A. Well, is it a question of what may be considered abnormal. It looks now as if we had normal conditions, unless it goes higher.

Q. Suppose it goes lower?

A. If it goes lower, it will be lower.

Q. Well, it is an unusual situation, isn't it?

A. Well, the situation has been unusual for the last three or four years; based upon three or four years ago it is very unusual, from 1914, but whether you call it an unusual situation now is another proposition because it has become a usual condition with us.

486 Q. Now, with reference to your gas oil: You testified in the Consolidated Gas case that it only required 4.10 gallons per thousand?

A. Right.

Q. And here you have it 4.20?

A. Yes.

Q. Why does it take more gallons of oil here?

A. Well, I testified that in shutting down a plant you are likely to have a little bit less efficiency; you would be more likely to have it with the bad quality of coal, which would affect your oil efficiency—I would not undertake to state that you could do it at less than 4.2 per gallon.

Q. Why should there be any shutting down in this plant, this hypothetical plant of yours?

A. For instance, if they were operating a machine, it would take a million and a half a day running the one machine, and their send-out was only a million and eleven hundred thousand, there wouldn't be any place to put the gas.

Q. Couldn't they get along with only two machines over there?

A. If they did, they would build another, if they ran two machines and needed a third.

Q. Well, they don't need a third now, do they?

A. They put in a third because they needed it. They had two 7 foot 6 machines which, at times, required the use of both those machines in operation—

Q. And sometimes—

Mr. Ransom: Let him finish.

The Witness: And then it became necessary, in order to have a reserve, to build a third machine?

Q. When did you build that third machine?

487 A. I don't recall—I am only speaking from memory—I think it was 1914 or 1915. I can't recall the date—has it been as far back as that, Mr. Spear?

Mr. Spear: About 1911.

Q. Now, you say that you have to shut down some of those machines, and that takes more oil and more coal; isn't it fair to say that you have too many machines there now?

A. Absolutely not.

Q. Couldn't you get along with one of those 7½-foot machines?

A. Could not get along with any less than we have now and the probabilities are that some of those will have to be changed to some extent in order to increase their capacity.

Q. Are those efficient machines?

A. They are.

Q. How long have they been in use?

A. Well, Mr. Spear said as far back as 1911 when the last one was put in, and I should say the other two were put in some time between 1905 and 1906—I don't recall the dates, Mr. Chambers.

The Master: What is the state of repair on them.

The Witness: They are in good condition.

Q. When will those machines be running twenty-four hours so that you won't have to shut down?

A. If they are running the one machine and sending out fifteen hundred thousand a day the one large machine would be running twenty-four hours.

Q. Then you couldn't have that extra loss there for shutting down?

A. No—you might have had coal just at that time which might have the same effect on it; or you might have cold weather
488 which will have an effect on the candle power.

Q. Well, your condition of pounds and gallons of coal in your ten million foot plant was subject to that same infirmity?

A. Yes, to some extent.

Q. Now, your tar and drip oil credit, did you base that on any records of the company?

A. That is under ordinary operating conditions with the grade of oil that we get, and for the purpose of carrying heat to produce twenty-two candle power, you get about that much. I have used sixteen and one and a half per cent, seventeen and a half per cent, combined the two, and the drip oil and the tar there will run from fourteen to eighteen and nineteen per cent, but an average condition would be about seventeen and a half per cent of the drip oil and tar.

Q. That would vary, too, wouldn't it?

A. Oh, yes, it varies from day to day. The average condition for the year would be pretty close to that.

Q. Now, they use that tar, do they?

A. Yes.

Q. For fuel?

A. For the boilers.

Q. They could get more for it if they sold it?

A. If they did they would probably sell it.

Q. Well, do you know whether they try to sell it?

A. Oh, I think they have; my impression is that they have.

Q. What do they do with the drip oil credit, sell that?

A. I think they have sold it at some time; if not, it was burned with the tar.

489 Q. Do you know whether there is a market price for drip oil?

A. The Consolidated had a market price for drip oil.

Q. Isn't it over five cents?

A. There have been times—I think the market price for drip oil would be between four and five cents now.

Q. Didn't the Consolidated get over five cents for it?

Mr. Ransom: Objected to as incompetent and immaterial, as to what it was at some previous time; the testimony is that the price of certain of these residuals has declined since 1918.

The Master: I will allow the question.

The Witness: Yes, if the Consolidated got five, I think the Flushing would get less than that on account of the location.

Q. You allowed in the Consolidated case, .061 gallons per thousand?

A. That is what they had been getting, but you can't get it now.

Q. Here you only allow .04?

A. That is right.

Q. And for tar, in the Consolidated, you allowed .656 gallons?

A. Yes.

Q. How much did you allow for tar in this case, one million cubic feet?

A. What do you mean, on the Consolidated?

Q. You have lumped tar and drip oil together?

A. I think I took both at the same price, my recollection is.

Q. Well, there is a variance between your gallons of tar and drip oil?

490 A. Yes, but the method of disposing of this material and the small quantity of drip oil that they would make would be so small that I took $4\frac{1}{4}$ cents as an average price of the two, most of which is used by themselves and not worth any more than that for themselves.

Q. How do you explain that big variance between tar and drip oil in your testimony in the Consolidated case and here?

Mr. Ransom: Objected to as nearly a year ago.

The Master: Overruled.

The Witness: I was testifying as to prices as obtained in, I think it was October, 1918. The Consolidated Gas Company was not getting those prices for that material today.

Q. In other words drip oil has gone down?

A. Drip oil and tar has gone down.

Q. Both have gone down?

A. That is right.

Q. Considerably?

A. Considerably, yes.

Q. There is one thing that is not going up?

A. Yes, that is. It was up during the war because they were using those materials in the production of munitions of war.

Q. Well, there is one kind of oil that has gone down, isn't it, strange as it may seem, isn't that so?

A. Yes, drip oil is considerably less. Drip oil during the war commanded a very high price because they could extract toluol for government purposes, for munition purposes. Of course the bottom dropped out of it when the war was over.

The Master: What is it used for now?

The Witness: Practically for fuel purposes, is all.

491 Q. It is good oil, isn't it?

A. It is good fuel oil, yes.

Q. You could use it in the fuel burning business, couldn't you?

A. Yes.

Q. And those are on the increase?

A. I suppose they are.

Q. Isn't it good for anything else except to burn?

A. Oh, I think there are many cases where the amount that the contractors can take care of is limited and they will not take all of the tar that the Consolidated Gas Company produces except at a price at which they can burn it, because they have no market for it. There is a certain amount of those tars that they put in their stills and refine for the purpose of making pitch for the roads, &c., but with their congestion, the demand for it is less than the supply of tar, and we are restricted as to the amount we can sell them except for fuel purposes at a price that it is worth to them for fuel purposes, and they don't want to give us as much for that as it is worth to ourselves.

Q. How do you come to put down what it was worth to yourselves here at so low a price as $4\frac{1}{4}$ cents?

A. It wouldn't make a particle of difference whether it was $4\frac{1}{4}$ cents or ten cents as long as they were using it; it would be a credit in one case and a debit in another, and the production cost would be exactly the same.

Q. Suppose we put it down as ten cents?

A. If we could get ten cents we wouldn't be using it for
492 boiler fuel purposes; then we would sell it and use the boiler fuel for generating steam.

Q. How do you fix four cents?

A. Because the Consolidated price is about $4\frac{1}{4}$ and according to the market price it was the best we could get for it.

Q. The Consolidated was selling it for about four cents?

A. About that price.

Q. Aren't they selling it for five?

A. I don't know; they may have sold a small quantity, I didn't keep in touch with that; I think there may have been a small amount sold at between $4\frac{1}{2}$ and 5. I am not sure.

Q. Then whatever the market price of that tar and oil is, it ought to be credited here?

Q. You have only credited four and a quarter cents?

A. That is all I believe it is worth and is all I believe they can get for it—they wouldn't get as much as the Consolidated Gas Company on account of the transportation facilities.

Q. But you have fixed four and a quarter cents?

A. Sure.

Q. That is what you think the credit ought to be?

A. Yes.

Q. You just said, Mr. Woods, that the net result would not be any different whether it was $4\frac{1}{4}$, $4\frac{1}{2}$ or 5?

Mr. Chambers: Or 10, he said.

The Master: No, he didn't say 10. What I was going to ask you is, at what price could the stuff be sold where it would make a difference.

493 The Witness: That would depend entirely, your Honor, on the price that they paid for boiler fuel.

The Master: Well, take the price now of eight dollars and something for boiler fuel, at what price would it pay you better to sell the residual?

The Witness: I think a figure of between $4\frac{1}{2}$ and $4\frac{3}{4}$ cents—it is about fifty-fifty. Beyond that point it would be an advantage to sell.

The Master: If you could get more than $4\frac{3}{4}$?

The Witness: If you could get more than $4\frac{3}{4}$. There is always an element entering into that which, at times, you have got to consider is our inability to get labor; it has been a great disadvantage in the use of tar. Basing it upon actual costs, which considers the evaporation, the less labor in handling the ashes and putting in the coal, the less labor required to fire your boilers, it would be about that figure, $4\frac{3}{4}$ cents on the present price of coal. There are times, however, that we could better afford, almost of necessity, to use tar if we could get 5 cents, owing to our inability to get labor—that has been a condition that we have had for the last two or three years.

Q. Now, for iron oxide, water and sundries you figure \$12.50 per thousand cubic feet?

Mr. Ransom: Oh, no, no.

The Master: A million.

Q. Twelve dollars and a half a million cubic feet, or 1.25 per thousand cubic feet?

A. Yes.

494 Q. Now, in the Consolidated case you allowed one cent.

A. Yes, sir. I believe that under ordinary conditions it would be about $\frac{1}{4}$ of a cent more.

Q. $\frac{1}{4}$ of a cent for every thousand cubic feet made?

A. Yes.

Q. What do you base that on?

A. Because of conditions that I know. Iron oxide, water and sundries is just one item in connection with this which would probably show somewhat different from what it shows in the cost account of the Flushing company, but I think you would find that iron oxide water and sundries was not less than $1\frac{1}{4}$ cents. You will also find that the boiler fuel is probably in excess of 22 pounds. That is to some extent accounted for from the fact that their water is probably less than we are using over here, because they have drive well in their place and they are pumping their water for condensing purposes and for their boilers. In supplying water right from the ground it requires a certain amount of steam to do that work, which is offset by the water bills they would otherwise have.

The Master: How much did you figure iron mass in the Consolidated case, do you recall?

The Witness: No.

Mr. Neumann: Iron mass and water, 1 cent.

The Witness: 1 cent, I think I figured. My recollection is that iron oxide usually costs $\frac{1}{4}$ of a cent per thousand cubic feet.

Q. It should not cost any more at Flushing than it did here in New York, should it, iron mass?

495 A. No, probably it would not.

The Master: How much did you say you figured on iron mass?

The Witness: The iron mass in the Consolidated case, I don't think I took it, I combined it. I think .25 to .35 cents—

The Master: The Teele exhibit here shows about $1\frac{1}{4}$ cents for iron mass alone. That is pretty high, isn't it?

The Witness: $1\frac{1}{4}$ would be high, if it cost that.

Mr. Ransom: The water and the sundries supplies brings the Flushing over $1\frac{1}{4}$ cents.

The Master: What I want to get from Mr. Woods is his statement that I have gotten, that 1.023 is pretty high for iron mass.

The Witness: I don't recall what that figure is, your Honor. I think that for iron mass it would be high. I think the probabilities are they loaded up with iron mass during that year. That material, you know, is used over and over again until it becomes spent.

The Master: Then I cannot take his 1.023 as being the average?

The Witness: No, I think 1.023 as an average for the oxide would be high.

Mr. Ransom: But the three items together, $\frac{1}{4}$ would be all right.

The Witness: I believe that would be absolutely right.

The Master: How could that be, when the water here is only .09 of a cent, and the sundry supplies only .02 of a cent, if iron mass is high at 1.023?

496 The Witness: As I stated, .1025 covering the conditions as ordinarily prevailing would be a fair average for the water for the boilers, for iron oxide, and for sundries. In the case of the Flushing company I think their water would be lower on account of that pumping, and that in turn would be offset to some extent by some increase in boiler fuel as the result of pumping this water.

Q. You testified in the Consolidated case, Mr. Woods, as follows:

"Q. What is the answer as to iron mass, a city water, and for minor materials? A. Iron mass, City water, sundries supplies, et cetera, 1 cent per thousand cubic feet?"

A. Yes.

Q. You are a little high, aren't you, on your iron oxide water and sundries?

A. My judgment is that $1\frac{1}{4}$ cents would be a fair average condition for those items.

Q. You didn't base that on the record did you?

A. No, I didn't look at the record. If the record shows $1\frac{1}{4}$ cents for oxide it would be high for any one year.

Mr. Ransom: It is not $1\frac{1}{4}$, I think the record ought to show that.

The Master: It is .0123.

Q. Now, you would not be surprised would you, if the unaccounted for gas, according to the company's own statement for 1917, was 7.96 per thousand cubic feet?

The Master: For what year?

Mr. Chambers: 1917.

A. I should say that if that is the record—I don't recall what it is—it has probably gone from 8 to 16 or 17 per cent.

497 Q. There is 7.96 for 1917, and 8.07 for 1918?

A. Well, the weather conditions would have something to do with that. If you will refer to previous years you will find it is higher, and for 1919 it was more than ten per cent.

Mr. Ransom: It was 11.03 per cent.

Mr. Chambers: I object, this is cross-examination.

The Master: The Teele exhibit is in evidence.

Mr. Chambers: Does it show that?

The Master: It shows 11.03 for that year.

Q. Well, 1918 was a pretty bad year, wasn't it?

A. Well, the winter of 1917-1918 was a bad year.

Q. That would show a high unaccounted-for gas, speaking of the winter of 1917-1918, the records ought to show a high unaccounted-for gas?

A. It may or it may not.

Q. How was the cold in 1918, 1917-1918?

A. I don't think there has been a very great difference in cold, it seems to be getting a little worse all the time.

Q. How do you account for such a low unaccounted-for gas in 1917 and '18?

A. I think it is a particularly good operation.

Q. So it depends a great deal on the operator?

A. On the operation. It would indicate that their meters, mains and services were in good condition.

The Master: That is the way they ought to be.

The Witness: Yes.

Q. And that they were not at some other time.

A. Anything from 9 to 12 or 13 per cent would be a good fair operating condition. Beyond that point there would be 498 something wrong with their mains or meters, or some other condition.

Q. The winter of 1917-18 was a very severe one?

A. 1917-18, yes.

Q. Severe than any you have known for quite a good many years, wasn't it?

A. Well, the winter of 1920 was probably not quite as severe, but covered a longer period of time.

By Mr. Ransom:

Q. You mean the winter of 1919-20?

A. Yes.

By Mr. Chambers:

Q. The time hasn't anything to do with unaccounted-for gas?

A. I don't know what you mean by time.

Q. Well, it might be just as low in 1920 as it was in 1906?

A. If all conditions were the same, yes.

Q. Now, the gas-making labor, you have——

The Master: Let me interrupt for a minute. Don't you get a larger quantity of unaccounted-for gas with a greater number of meters?

The Witness: Well, I think that would probably be true to some extent. It would be proportional, because the sales would compensate for the increased number of meters.

The Master: Well, there is more apt to be a variation with a greater number of meters than there is with a lower number of meters, isn't there, slow meters and other variations?

The Witness: Well, no, my judgment would say no, that the average ought to be pretty much the same. Of course the sales per mile of mains——

499 The Master: If your mains are kept in good condition, and the meters are kept in fairly good condition, why should there be a greater unaccounted for in a suburb than in a city like New York?

The Witness: Well, the sales per mile of main, and the sales per mile of service are very much less than in a large territory, so that any leakage of any kind upon the system, the percentage would be a great deal more. For instance, let us assume that you are sending out a million a day, and that there was actual leakage taking place of we will say 50,000 a day. If through those same mains, without increase in pressure they sell ten million a day; the unaccounted for, so far as leakage is concerned, would still be 50,000 a day, that is, the actual leakage. Loss by condensation, et cetera, would be in almost the same ratio. Low meters, et cetera, would be in the same ratio, but the actual leakage would be the same. For instance, if there was no consumption on those lines you would have an unaccounted for which would be equivalent to your send-out.

Q. Now, Mr. Woods, gas-making labor, in the Consolidated case you fixed a figure of 2½ cents per thousand cubic feet.

A. I did.

Q. Here you jump that to 6.71 cents.

A. Yes.

Q. Making a difference of nearly 4¾ cents?

A. About 4¼ cents.

Mr. Ransom: That was last September. There have been several increases in pay since then.

500 Q. And it is 4 cents, nearly 4¾ cents more per thousand cubic feet?

A. Yes.

Q. Did you base that on any records of the company?

A. No, I know the number of men required to operate a plant of that kind.

For instance, you have a gas maker who makes a million feet a day, in three shifts they would make a million feet for each of these machines, and in a larger plant, where they had larger machines, in a plant capable of handling larger machines that same gasmaker would make three million, so for the gas-maker himself it would be three times as much as in the large plant where they have these large individual units. You could not afford to put up individual units of that kind in a plant like Flushing, you would have to rebuild the plant entirely in order to handle the proposition.

Q. Four cents more to make gas in a million cubic-foot company than in a ten million company?

Mr. Ransom: I object to that. He is comparing September, 1919, with April, 1920, whereas the proof in the Consolidated case showed two increases in pay after the September figure.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. The gas-manufacturing labor in a plant such as exists there would be infinitely more than in a plant making ten million cubic feet a day.

Q. You figure one superintendent here at \$5.75?

A. Yes, sir.

501 Q. In the Consolidated how many superintendents did you figure?

A. One superintendent.

Q. At the same price?

A. No.

Q. How much did you give him?

A. I don't recall the testimony that I gave now. I would not like to give it offhand again.

Q. Wouldn't the superintendent be about the same?

A. No, the superintendent in a larger plant would be getting more money.

Q. \$5,000 a year—that is what you testified to in the Consolidated case, isn't it?

A. Right.

Q. How much a year would you give the superintendent?

A. That figures, I think, about \$2,100, including his house rent, or, he lives in the plant. I make it on a ten million cubic foot plant, making an average of ten million a day, with a man getting \$5,000 a year. Here is a plant making one million a day, and the superintendent getting \$2,100 a year.

Q. Plus his house?

A. Plus his house.

Q. How much do you figure that at?

A. I didn't figure his house. I suppose it would be \$600 to \$700 a year.

Q. That would make about \$2,600 or \$2,700?

A. Yes.

By Mr. Ransom:

Q. House rent is not in this figure, is it?

A. No.

By Mr. Chambers:

Q. You have a clerk here at what, \$4 a day?

A. \$4 a day.

502 Mr. Neumann: I move to strike out the question of counsel, because that house is figured in the plant.

Mr. Ransom: Not in the \$5.75 a day figure.

Mr. Neumann: But that is added in the whole plant.

Mr. Ransom: We will add to these costs whatever you say the value of the house is.

Q. You have not figured the superintendent's house in this?

A. No.

Q. Not a clerk—how many clerks did you have when you testified in the Consolidated Gas Company case?

A. I don't recollect now.

Q. More than one?

A. One or two, probably a clerk and assistant.

Q. And here you only have one?

A. Yes.

Q. You have three gas-makers here on this Exhibit 77?

A. Yes.

Q. At \$4.64 a day?

A. An average price of—

Q. How many gas-makers did you have when you testified in the Consolidated case?

A. I don't recollect the number now. I would have to make the calculation again to find out. Gas-making labor on the other statement, there were so many things involved that I don't recall just now, unless I went into it.

Q. You have three engineers here?

A. Yes.

Q. At \$4.93 a day?

A. The law requires that we have the plant covered by an engineer at all times.

503 Q. How many engineers did you have in the Consolidated case?

A. I don't recollect the number; probably more than that.

Q. More than three?

A. Yes, because we have exhausted attendants and turbine attendants from time to time.

Q. Now, two boiler firemen you have on Exhibit 77?

A. Yes.

Q. At \$4.48?

A. Yes.

Q. How many boiler firemen did you have in the Consolidated case?

A. I don't recall the figure now; I would not undertake to give it to you from memory.

Q. More than two?

A. Yes.

Q. Two generator firemen and coal passers you have here?

A. Right.

Q. At \$4.48 a day?

A. Yes, sir.

Q. How much did you pay—they were both firemen and coal passers?

A. Yes, sir.

Q. How many firemen and coal passers did you have when you testified in the Consolidated case?

A. More than that; I don't recollect the number.

Q. You have two laborers here, at \$4?

A. Yes, sir.

Q. How many laborers did you testify to in the Consolidated case?

A. I don't recollect.

504 Q. Now, you have Sunday and holiday overtime?

A. Right.

Q. \$2.73?

A. Right.

Q. What does that \$2.73 relate to?

A. Because some of these men are paid time and a half for overtime for Sunday and holiday work.

Q. What is that?

A. That is a percentage of their daily pay when they work Sundays and holidays, for which they get time and a half.

Q. All those figures are based on your own idea?

A. Those figures are based upon the rates of pay that are being paid by the Flushing Company. I know it requires that number of men to perform that work.

Q. Were they the same last fall?

A. No.

Q. Substantially the same?

A. No, they were somewhat less, I think.

Q. Were they?

A. Yes.

Q. How much less for gas-makers?

A. I don't recollect the exact amount, but I know there has been a change made since last fall.

Q. In these very men at that plant?

A. Yes.

Q. But you don't know how much?

A. I am not undertaking to say from memory just how much it was.

Q. How do you explain the difference of four cents here to make

a thousand cubic feet of gas than you testified to as of October 16, 1919?

505 Q. Mr. Ransom: I object to that as already fully covered.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Because of the difference in the character of the plant, and the unit which a man can produce at that plant as compared with a plant such as I testified to. If you have one five-ton truck, Mr. Chambers, and five one-ton trucks, they cannot be as economically and efficiently operated as the one five-ton truck. The conditions might be such that you could not operate the five-ton truck, and would have to operate the five one-ton trucks.

Q. How many machines did you have in the ten million cubic foot plant, gas machines?

A. I don't recollect, probably four or five machines, operating four or five machines.

Q. That is only one more than you have here in this million cubic feet?

A. No, we are operating those continuously. I had three to four machines in operation all the time in the ten million plant, with a standby for cleaning and recheckerking.

Q. How many machines in all in that plant?

A. I think five or six machines.

Q. That is three more than here?

A. Yes, but different sized machines.

Q. And yet you are able to run them for less than you can the three machines?

A. We are talking now about cost per thousand cubic feet. You can operate them for less per thousand cubic feet, naturally.

Q. You testified in October that you could run, according to that, six machines four cents cheaper than you could run, so far as labor is concerned, three machines?

506 The Master: Per thousand cubic feet.

A. Per thousand cubic feet. I did not testify to any such thing as you have asked the question.

Mr. Ransom: The figure relates to the entire process of gas making, and not merely to the machine.

Q. Well, what did you testify to in that regard?

A. I testified that in a plant such as I testified to in October, 1919, as bearing upon the Consolidated Gas Company's system, which did not include the Flushing Company in any sense, that a fair operating condition was $2\frac{1}{2}$ cents per thousand cubic feet for gas making labor.

Q. If you had a plant of twenty million cubic feet capacity, could you operate it for less than these figures that you have in October, 1919?

A. I could not.

Q. There would be no decrease?

A. No.

Q. How about the other way, the converse?

A. If you can operate a plant continuously anywhere from five to ten million—if you recall, Mr. Chambers, in my testimony, I testified to a plant on an average condition operating on ten million feet a day, and that plant would run anywhere from $7\frac{1}{2}$ to 15 or 18 million. I took a fair operating condition throughout the year. At times the gas making labor would be somewhat less than $2\frac{1}{2}$ cents, and at other times it would be somewhat more than $2\frac{1}{2}$ cents, but I believe under the conditions under which we were operating, a fair amount was $2\frac{1}{2}$ cents per thousand cubic feet.

Q. This company out there does not make a million cubic feet a day?

A. They do.

507 Q. They make a good deal more than that?

A. They will make slightly more than that; they average that.

Q. Didn't you hear testimony the other day that it was 1,600,000?

A. That is a maximum capacity. They probably gave you a send-out of 1,600,000. I do not recall the exact figures, but I think their annual send-out was around 375 to 380 million cubic feet make, which would be close to an average make of one million a day. A million a day would be 365 million. Their average make was probably 1,050,000 a day.

Q. They make sometimes 1,600,000?

A. Yes.

Q. Wouldn't that cut the cost down?

A. Yes, and if they made less than a million it would probably bring it up.

Q. Do they make less than a million that you know of?

A. There are times when it must be less than a million to get an average throughout the year of slightly more than a million.

Q. Then they could close down one of the machines and relieve some of these gas-makers and others.

A. I took it as a condition of operating a million a day. At times their cost may be a little more, and at times a little bit less than that.

Q. I don't quite understand these Sundays and holidays here overtime, Mr. Woods. You didn't have that in the Consolidated case, at least not so we could see it.

Mr. Ransom: I object to that as incompetent and not the proper way of proving a statement in the Consolidated case, which was made up on a somewhat different basis. He did not in his Exhibit 353 for Identification undertake to give the details of the different classes of labor and rates of pay. He submitted a separate statement which showed the rates of pay and of overtime.

The Master: Objection overruled.

Q. You didn't have any such item in your Exhibit 353 for Identification in the Consolidated case, did you?

A. I don't recollect. I think probably an allowance was made in figuring up the cost per thousand cubic feet that was taken into consideration. It was not shown in the exhibit in the Consolidated case as it has been shown there.

Q. Did you base this \$2.73 on the practice of the company?

A. On the practice of the company, time and a half for overtime for Sunday and holiday work.

Q. And that is based on that?

A. That is right.

Q. For these different men here?

A. That is right.

Q. Now, have they as many men as you have set forth there over in the plant?

A. I should say they have, yes.

Q. Well, do you know?

A. I should say so.

Q. That is, have they a superintendent, one clerk, three gas-makers, three engineers, two boiler firemen, two generator firemen and coal passers, and two laborers?

A. I would say so, yes.

Q. Are you sure about that?

A. I am quite sure that they have that many men.

509 Q. You don't know what they pay them over there, do you?

A. I do.

Q. Those prices?

A. Those are the average rates. The gas-makers and engineers are not all paid the same rate. The average rate for those different classes is there.

Q. The superintendent, do you know what he gets over there?

A. I do.

Q. What does he get?

A. \$2,100 a year, I believe.

Q. And his maintenance, his house there?

A. His house.

Q. Does he pay rent for that?

A. No, he doesn't pay any rent that I know of.

Q. Now, the clerk?

A. The clerk I have there at \$4 a day. Just what they are paying the clerk I don't know. I don't believe they are paying quite that, because they have a new clerk they just put on, and he probably is not getting \$4. \$4 is what they will have to pay as soon as he is broken in.

Q. What are the gas-makers getting over there?

A. The average rate is as indicated on that exhibit.

Q. Then they have got three over there?

A. Yes.

Q. And three engineers?

A. Right.

Q. At these prices?

A. Right.

Q. That is, some of them are getting less, I take it, and some more?

A. Yes, for all three that would be the rate.

510 Q. Now, repair labor—they have two mechanics over there?
A. Not always.

Q. But you have two here steady?

A. I testified that on the average they would have two. They may have two or three at one time and they may not have any for a day or two, because they have different classes of work to perform, and they have to call in men to get that work done; but in my judgment the average employed on repair work would represent what I have indicated on the exhibit.

Q. A helper—have they got a helper over there?

A. They would have when the work is going on.

Q. Isn't work going on?

A. There is always some minor repair work going on. On other days there may be some extensive repairs where they will want to put extra men on the work.

Q. Is that a pretty high price, \$4?

A. That is the best we can get. It is a question of how long we can get that. We are paying more than that for a good many of our laborers now.

Q. Labor is very high now?

A. It is considerably higher than it was last October when I testified, and it looks as if it might go higher still, due to our present inability to get men.

Q. You don't know whether it will ever stop, do you?

A. God knows I hope so.

Q. According to you, gas labor and gas oil, and all the things you use, are going higher; there will never be any let-up?

511 A. We can only tell what our experience has been in the last two or three years. I cannot prophesy any better than you can, but, based on our experience, it has not gone down, but on the contrary has gone up.

Q. Back in 1902 you heard Mr. Addicks testify about coal the same as now?

A. He did, because of strikes in the coal mines. It was not a general condition of labor unrest in the country, throughout the country, but there was a strike in the anthracite mines. We at that time had difficulty in getting anthracite coal at that particular time.

Q. Your salary has not gone up, has it, since you testified before?

A. Not a great deal.

Q. Has it some?

A. Probably a little. I might say, Mr. Chambers, that some of the salaries of people that did not testify got more than I did, so it was not a question of my work in the case.

Q. Has there been a general raise all around since you testified before?

A. I don't know whether there has been a general raise or not. God knows we needed it.

Q. Well, with your salary, Mr. Woods, I would not think so. Was it \$18,000?

The Master: Where do you live, Mr. Chambers?

Mr. Chambers: Albany.

The Master: Live down here for a while and see how far you will get with \$18,000.

Mr. Chambers: I take it that Mr. Woods lays away something for a rainy day.

Mr. Ransom: There isn't any testimony in any case indicating \$18,000.

The Master: \$13,500, as I recall it.

Q. That was a stenographer's error, was it, Mr. Woods?

Mr. Ransom: It was your mistake.

512 Q. What salary are you getting from this company?

A. \$500 a year.

Q. For the time you devote to it?

A. That is right.

Q. That goes to you direct, or does the Consolidated get it?

A. That goes to me direct.

Q. And that is for the time that you devote to this company, to the affairs of this company?

A. Yes, and my advice.

Q. Now, the repair labor. You said you have two laborers at \$4 a day?

A. Right.

Q. Now, in the Consolidated case your repair labor was only 1 $\frac{1}{2}$ cents to make a thousand cubic feet of gas?

A. Yes.

Q. Here you have almost 2 $\frac{1}{2}$ cents?

A. Yes, probably our repair labor would be more now in the Consolidated. Instead of being 1 $\frac{1}{2}$ cents it would be 1 $\frac{3}{4}$ cents, as a result of increases in rates since that time, and you would naturally expect it to be more in a plant of that kind, owing to the smaller-sized units.

Q. Your Exhibit 353, for Identification in the Consolidated case was not based on the Consolidated plant, was it?

A. It was based on their rates of pay, of the system.

Q. Now, the repair material, you have 3 cents here?

A. Yes, sir, right.

Q. And in the Consolidated case you had 1 $\frac{1}{2}$ cents.

A. Right.

513 The Master: Why should the repair material cost any more?

The Witness: Because your Honor, in making repairs for instance, in repairing machines and repairing the steel work, repairing the door-frames, all these repairs that must take place, these machines won't run any longer a period of time than with the larger machine, but the unit of production is considerably less, so that the actual cost of repair is practically the same as on the larger amount, but

owing to the production the cost per thousand cubic feet is lower.

The Master: Do you think 3 cents is pretty liberal?

The Witness: I think, taking it year in and year out 3 cents would be a fair cost of material.

The Master: Then 4.69 is high?

The Witness: I think taken on the average that would probably be a little high.

Q. Don't you think you could cut that 3 cents down a little?

A. No, I do not; if I had thought it was lower I would have put it lower.

Q. Now, I find one here, Miscellaneous Works Expense, which is lower now than it was when you testified in the Consolidated case. That was $1\frac{1}{4}$ cents, and now you have it 1 cent?

A. Yes.

Q. There is something going down hill—isn't that a mistake?

A. No.

Q. That is right?

A. That is right.

Q. I cannot understand how that would be lower.

514 A. You would have less watchmen, and things of that kind, and I believe that 1 cent would cover that figure.

Q. Then perhaps the miscellaneous works expense in your 10,000,000-cubic-foot plant would be down, would it?

A. No, it would probably be higher.

Q. That is going up? I don't understand why there is a difference there?

A. Well, there are watchmen, janitors and messengers and all sorts of things they have around a large plant, where there are some things you would not have in a smaller plant.

Q. Well, you said it cost to make a thousand cubic feet of gas in your 10,000,000-cubic-foot plant as of October 16, 1919, 50 cents—50.61?

A. If that is the figure.

Q. Now, you have this up to 64 cents.

A. That is right, and it will not be produced for any less than that, Mr. Chambers.

Q. Do you know what the company did produce it for?

A. I have seen the figures.

Q. You did not check up to see how this gibed with the actual experience?

A. No, I have seen the figures, and know it will check pretty closely to it. I don't think it will conform to my figures in every respect.

By the Master:

Q. Is it possible, Mr. Woods, that this repair material for 1919 included material put into stock, that would make that difference in your estimate of 3 cents in the actual cost of 4.69, according to the record?

A. Well, I would not say. They may have bought material

charged to repair account, and it may be in stock pending the use of it.

515 Q. Yes.

A. I would no say, that might be so.

Q. In arriving at what the fair cost of production would be for one year I ought to have that in mind.

A. I do not know that that is the case.

Q. That is, taking into consideration your statement that you think 3 cents is right, and your testimony in the other case or your statement today that $1\frac{3}{4}$ would be right for the Consolidated, for a larger plant, as compared with 4.69, it would indicate putting in an additional supply, would it not, or a reckless expenditure of money, either one?

A. Their cost may have been somewhat lower the year before, or there may have been more extensive repairs in 1918 than in 1919.

The Master: Mr. Woods in his Exhibit 77 is talking of present cost, only 3 cents.

Mr. Ransom: Yes, but the year before the figure was way below.

The Master: Do not tell me about the year before because it is not in evidence. I think I have got to shave this. You have iron mass and repair material, that seemed to be higher and would indicate the putting in of stock.

Mr. Ransom: Iron mass totalling about 1.35 instead of 1.25.

The Master: Iron mass .0123 on your exhibit, as against probably 35 to 50/100th- as testified by Mr. Woods from which I draw the inference that you probably put in a supply; and I also draw that inference on repair materials.

By Mr. Chambers:

Q. I want to read you a little testimony, Mr. Woods, that you gave in the Consolidated case.

516 The Master: Is it inconsistent with anything said here today?

Mr. Chambers: Yes.

The Master: All right, go ahead.

Q. I am reading now from page 4844 of the Consolidated record:

"Q. Generator fuel, water gas cost; you mean, do you, by this that you used 32.50 pounds per thousand; to make a thousand cubic feet of gas you used so much?"

"A. That is right.

"Q. You had in mind a hypothetical situation, did you? Was it hypothetical?

"A. These are average operating conditions under which we used 32 $\frac{1}{2}$ pounds."

The Master: Just wait a minute, there was another item there that I wanted to get clear.

By the Master:

Q. You estimate, Mr. Woods, the cost of boiler fuel at 6.39 on the basis of 22 pounds, and the 1919 record would show a cost of 8.82 on the basis of nearly 26 pounds, taking the seven-tenths of a gallon as 9 and some fraction pounds.

A. The figure that I have there, your Honor, the 3 pounds for generator fuel figure, and the other figure is the last price that they paid for boiler fuel.

Q. Yes. What I mean is the operating records would indicate that they used 16 and 9, over 25 pounds of boiler fuel, as against your 22?

A. That may be.

Q. Would that indicate inefficient operation?

A. Not necessarily, because I had estimated 22 as a conservative estimate. It is pretty difficult to say just exactly what that would be, because I was unable to determine, your Honor, just how 517 much high pressure distribution there was, and I made a figure which I thought was a conservative figure, of 22 pounds—that it could not be less than 22 pounds.

The Master: There seems to be quite a variance between twenty-five and a fraction and twenty-two, and a difference in cost of from 6.39 to 8.82.

Mr. Ransom: You have to take into account this high pressure thing, that was new.

The Master: I know, but so is Mr. Woods' statement.

Mr. Neumann: Very new.

The Master: No, I did not mean that jocularly; it is an up-to-date statement.

Mr. Ransom: I understand that, but they may have at a particular time used—

The Master: More than they would use this year.

Mr. Ransom: Probably would use under average conditions.

The Master: Yes, that is what I am trying to get at, and why not, when I take that into consideration, have in mind that they may do better than that.

Mr. Ransom: Yes, and very soon we will have figures showing what they are doing in 1920. Of course, the difference in the quality of coal—

The Master: That is the value of this oral testimony, as supplementing your record.

Mr. Ransom: That is why I am offering it.

The Master: Mr. Woods says they ought to do better than they show here on boiler fuel, iron mass and repair material.

518 Mr. Ransom: On an average of conditions. We regard these figures here as minimums, but they are fair averages.

Mr. Neumann: It indicates quite clearly that one year is not a good basis on which to try and figure out whether a statute is unconstitutional or not.

The Master: On the other hand, Mr. Woods estimates for average

64.14 and actual operation for 1919 indicates 63.445. All right, go ahead now.

Mr. Chambers: I was reading; I will continue.

By Mr. Chambers:

Q. This is the rest of your answer:

"Under the conditions we are operating under here, with the material we have on hand, an average figure under these conditions will be 32½ pounds of anthracite coal."

Now, I will skip a little bit.

Mr. Ransom: Of course.

Mr. Neumann: You can read it all if you want.

Mr. Chambers: You can read the rest; it is not material. I will read it all.

Q. (Continuing):

"By the Master:

"Q. That, I understand, Mr. Woods, is a statement of fact by you based upon an observation running over many years?

"A. That is, yes.

"Q. And watching the manufacture of gas?

"A. It is what is in the manufacture of gas.

"Q. I say watching it?

"A. Watching it; that is right.

519 "Q. You know from day to day you have got to figure on 32½ pounds for a thousand cubic feet of gas?

"A. That is right.

"By Mr. Chambers:

"Q. It depends on the kind of a generator you have in mind, does it not?

"A. Upon the kind of generators that are in use. A modern generator, as I have in mind."

You remember that, do you not; that is right so far?

A. As far as I can remember that is right, yes.

Q. —.

"Q. What type did you have in mind?

"A. The type of generator? The type used by the Consolidated Gas Company.

"Q. What type is that?

"A. The Lowe improved three-shell water gas sets.

"Q. You had that in mind?

"A. Yes.

"Q. That is the generator you used?

"A. That is the generator which we are using.

"Q. I mean that you used at the basis of this figure?

"A. We used as the basis of that figure, yes.

"Q. What kind of condition did you assume it was in; first class?

"A. In good operating condition, as we keep our machines.

"Q. You based it on the way you keep your machines?

"The Master: Good operating condition, he said.

"Q. What capacity generator was it?

"A. It would not make much difference whether they were making two million or two and a quarter or three million, depending on the size of the machine; with good operating conditions the result would be the same."

Is that correct?

520 A. That is right.

Q. If the experience of this company shows, Mr. Woods, that they used more coal than that, than the coal that you spoke of when you were testifying in the Consolidated Gas Case, and which testimony I have just now read, would you not say that something was the matter with these generators?

A. No, I would not necessarily. It might be possible, Mr. Chambers, that they could get three or four cargoes of coal, and it would be an unfortunate thing, but if they were all bad that generator fuel would run 37 or 38 pounds, and you could not help yourself.

Q. That would only be an isolated incident, would it not?

A. It would be an incident. It is an incident we have at times, where they will get a cargo of coal and immediately the results go off, that they cannot control them or rectify them; they cannot get back to a good operating condition.

Q. You took that into consideration when you testified in the Consolidated case?

A. I did, and, as I stated here, while we have those conditions and we have a bad fuel condition, that with the coal that we receive and the coal that we have on hand, the quantities that we are able to use, we are able to use some of our good coal with our bad coal and try to obviate those conditions, which cannot apply in a case like this.

Q. You want to have the Court understand it costs 14 cents a thousand cubic feet more to make gas over in this New York & Queens plant than it did in this Consolidated plant?

521 Mr. Ransom: Objected to as incompetent. Here they are comparing September, 1919, with April, 1920. The Consolidated cost is about 65 cents now.

The Master: I will sustain that objection.

Mr. Chambers: Exception.

Q. Do you remember that you testified in the Consolidated Gas case that you allowed about \$152 a thousand cubic feet plant capacity for a water-gas plant?

The Master: On value.

Mr. Chambers: On value.

Mr. Ransom: Objected to as not cross-examination.

The Master: Overruled. I was going to ask it myself.

Mr. Chambers: \$152.60, I think, to be exact.

A. I did.

The Master: That was in the early part of 1919?

The Witness: Such plants as we had, your Honor, on a plant for 10, 20 and 30 million. I will tell you, just what the value of the Flushing plant is I do not know.

Mr. Chambers: Well, he has answered my question.

The Witness: Well, I would like to complete it.

Mr. Chambers: I do not want you to make a speech, with all due respect to you, Mr. Woods.

Mr. Ransom: Let the witness finish his answer.

The Master: No, I will take that as your answer, Mr. Woods, for the time being. As I understand it, the question was 522 whether you did not estimate the value of manufacturing water-gas plant in the early part of 1919, good operating condition, based upon production per thousand cubic feet, at \$152?

Mr. Chambers: He said yes to that.

The Witness: Your Honor, I will qualify that by this statement: That I did not say that it was \$152 as of 1919 prices.

The Master: No.

By the Master:

Q. Your testimony in the Consolidated Gas case was, as I understood it, Mr. Woods, that for the purpose of an intercompany adjustment between the Consolidated, New York Mutual, the Ravenswood and New Amsterdam plant, you made a report in which you said that the value of water-gas plant ought to be figured at approximately \$152, with an additional \$10 and something for land over in Long Island and an additional \$50 and something for land in New York.

Mr. Neumann: \$15.

The Master: No, 50.

Mr. Neumann: I think the record says 15.

The Master: Then the record is wrong and I will correct it.

Q. There was \$202 for the gas plant and building in New York and \$160 and something for land and plant in Long Island; is that correct?

A. \$162.50 in Long Island and I think \$205 for the Mutual.

Mr. Ransom: \$205.75.

Q. That was your testimony in the Consolidated case?

A. Right.

523 Q. I understood that to be what that plant was worth for the purpose of fixing the plant capacity, the value of the plant capacity, that the Consolidated were using of the New York Mutual and the Ravenswood plant.

A. That is right.

Mr. Ransom: I suggest that the witness ought to be permitted to finish his answer.

The Master: He has finished it. You can re-direct him to anything you want.

Mr. Ransom: How can I re-direct on something there is no direct of?

The Master: But this is cross.

Mr. Ransom: How can there be cross on something there is no direct on?

The Master: Then it is new matter, and I will let you cross examine him on it. The answer is that I will give you a chance to ask anything you like.

Mr. Hyatt: He is supposed to be an expert, anyway.

The Master: Well, I had it in mind and was going to ask Mr. Woods that.

Mr. Chambers: I guessed that you were, so I thought I would beat you to it.

By Mr. Chambers:

Q. Mr. Woods, if you made your gas at $23\frac{1}{2}$ candle power at the plant, at the works, that would be 22 out on the district?

Mr. Ransom: Objected to unless you are referring particularly to this complainant. What plant do you mean, a suburban plant?

Mr. Chambers: What plant does Mr. Woods mean?

The Master: I did not hear the question.

524 Mr. Chambers: I asked him if he made $23\frac{1}{2}$ candle power at the works, whether that would be 22 out on the district.

Mr. Ransom: What works?

Mr. Chambers: I asked whether that would be 22 out on the district.

The Master: Ordinarily; that is what he said.

A. Yes.

Q. You can make $23\frac{1}{2}$ at the plant, can you not? Could you not at your hypothetical plant here make $23\frac{1}{2}$?

Mr. Ransom: Objected to, there is no hypothetical plant in this case.

A. Why, yes, you can make $23\frac{1}{2}$ candles.

Q. Would you not call this a paper plant, Exhibit 77? What do you call it, Mr. Woods?

A. At such a plant, like the Flushing plant, at any point in this vicinity.

Q. It is an hypothetical plant, is it not?

The Master: I will sustain the objection.

Mr. Chambers: Exception. Can I not ask him that? It is a paper plant.

The Master: No, his testimony refers to the Flushing plant or a plant like it, located at that point.

Mr. Chambers: It does not relate to the Flushing plant.

Mr. Ransom: Objected to as fully covered.

The Master: We have had enough of that.

Mr. Chambers: I do not think we have.

The Master: I do. Objection sustained.

Mr. Chambers: Exception. I would like to have him refer to it as the hypothetical plant, because I like that word.

The Master: I know you do.

525 By the Master:

Q. While Mr. Chambers is getting his mind on something else, that figure that you gave with reference to the New York Mutual and Ravenswood plants as to value was the average pre-war investment in a plant of that kind, I take it; is that right?

A. That is right.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, because the record will show what it was.

Mr. Chambers: He did not testify before as to a pre-war plant; he testified as in 1919.

Mr. Ransom: No.

The Master: No, I analyzed that figure in the light of all pre-war conditions, and Mr. Woods reached the conclusion I did, that for the purpose of that intercompany adjustment, just as for the purpose of the rate base in this case, he was taking the necessary investment under ordinary conditions, over a period of years, in a plant of that kind.

Q. Am I right about that, Mr. Woods?

A. That is right.

The Master: That is the basis under which I am working here, just as I did in the Consolidated case. My conclusion was, in the Consolidated case, taking the years as they come and go, the figures fixed by Mr. Woods in January, 1919, fairly represented the average pre-war value, and the value to the consumer and to the public, of a water gas plant, about \$150 plus the land.

Mr. Ransom: Of the size of the Mutual and Ravenswood plants.

526 The Master: Of that general type. I do not think there is much difference between sizes of plants. The record indicated to me in the Consolidated case that was a fairly safe basis of calculation, that the pre-war basis was \$150 for water gas plant per thousand cubic feet.

The Witness: Your Honor, if you wanted to build a plant of 250,000 now it would cost you \$175 per thousand.

The Master: Of course it would.

Mr. Neumann: That is reproduction cost today, is it not?

The Master: No.

Q. It would cost you more proportionately for a small plant than for a large plant, of course?

A. Taking a concrete case in a rough sort of way, your Honor, as comparing the Flushing company with this company, would be to take a packing box 4 by 4 by 4 and get its cubical contents, and the surface of that box, and take another 6 by 6 by 6, you will find that the actual material per cubical contents in the 4 by 4 by 4 is very much greater than where you use the 6 by 6 by 6. For instance, if you built a plant with generators, piping, exhausters and so forth, that will fit a machine to produce a million cubic feet a day, that is going to cost a great deal more than one that will produce three million cubic feet a day. In other words, there will not be three times the material in that three million capacity plant than in that million plant or million and a half, or whatever it may be. So that as the units are smaller, so in turn the value per cost of unit of installation must be more.

527 Q. How much more; how much difference is there, say, between the New York Mutual plant on the pre-war basis and a plant like the Flushing plant?

A. I should say that the Flushing plant would be somewhere between \$225 and \$250.

Q. As compared with \$150 or thereabouts of the Mutual?

A. Yes, because it all depends on the size. When you get up to the exhausters and the piping and everything else, you might have one of three million or three of one million, and they will cost you double what the one will cost.

Q. Taking the same basis of calculation as you used it for the Mutual and the Ravenswood plants on the intercompany adjustment in 1919, you would say that this Flushing plant would be from \$225 to \$250?

A. I do.

Q. Plus about \$10 for land, or less?

A. The land I have not looked up at all, I would have to investigate that somewhat. I should say if they had their plant and hold-ers and everything located at that point—I would only make a guess, but I should think it would be \$15 or \$20 a thousand.

Q. More than the Ravenswood?

A. I believe it would, because those units take up a lot of ground, your Honor, as compared with the others, and the space occupied in so far as capacity is concerned and per unit of space occupied, they will occupy more than these other plants.

Mr. Neumann: Mr. Wood, in making up that estimate —
528 Mr. Ransom: I object to the interruption unless Mr.

Chambers is through.

Mr. Neumann: What unit of value would you take for the land?
The Witness: I do not know.

Q. You have two million capacity there, have you not?

A. Practically that, yes.

Q. That is two thousand M's, is it not?

A. Two thousand M's, yes. I am not familiar with the land costs at Flushing. They will occupy more space per unit of capacity than these other plants.

By Mr. Chambers:

Q. Do you remember, Mr. Woods, in the Consolidated case you testified to this:

"Q. Then really what you did, you figured the value of a thousand cubic feet of water gas plant based upon the actual cost of constructing the Astoria water-gas plant?

"A. Practically that, your Honor, yes. I used the other figure to check up, and then made a check on the Astoria accounts to see how nearly it arrived, and I arrived at a figure of \$140, I think I found a figure in the 80-cent Gas lease of some \$142 or \$143, and I used the figure of \$140.

"Q. Yes, but your judgment depended very largely upon the actual cost of constructing the water-gas plant over in Astoria?

"A. It did.

"Q. That means a complete plant with necessary facilities?

"A. That is a complete plant with part of the cost of the holder that was at Astoria.

529 "Q. And the necessary facilities?

"A. That is right.

"Q. Now, this \$140 plus nine per cent, what is that, interest during construction?

"A. \$140 included overhead, and the interest during construction was added to that amount.

"Q. And that was the figure on which you based your estimate of the value of a part of the plant capacity at the New York Mutual?

"A. That is so. I applied that same figure to that in connection with the New Amsterdam Company and the New York Mutual Company, without making any valuation of their property whatever.

"Q. But the New York Mutual plant was very much older?

"A. Yes, it was an older plant.

"Q. Why didn't you make an allowance for that?

"A. Well, because the purpose of this report, when I had my previous reports, your Honor, was in connection with the use of these joint facilities, until I was told— instructed by Mr. Cortelyou, through Mr. Carter, to get up a report as to the use and what I believed would be a fair distribution of those charges throughout the various companies for the use of those facilities.

"Q. But I am talking about the figure you put against the New York Mutual part of plant capacity. What you were trying to get at, as I understand it, was what the total value of a plant was for a certain capacity?

"A. That is right."

530 "Mr. Ransom: I object to this. He is endeavoring to cross-examine his own witness on these things. He is reading in fragments of the record.

The Master: I will let him go ahead for a few minutes.

Q. (Continued.)

"Q. Taking the percentage of that capacity for the Consolidated would be a fair way?

"A. That is right.

"Q. It is your testimony that in your opinion a fair charge was based upon a value of plant capacity on the basis of \$152.60 per thousand cubic feet for a water-gas plant?

"A. As of that period.

"Q. Well, this was 1919?

"A. Well, I did not change the figure from 1919. That is the 1916 figure, I used in connection with my 1919 report, I did not change the cost."

And then over here it was 15.

The Master: I have to adjourn now.

Adjourned to Thursday, May 13, 1920, at 9.30 o'clock a. m.

Last Complainant's Exhibit No. 78.

531

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 13, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh and Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

GEORGE E. WOODS resumed the stand:

The Master: Who had Mr. Woods on cross?

Mr. Chambers: I had, and I had not quite finished with him.

The Master: Go ahead.

Cross-examination continued.

By Mr. Chambers:

Q. Mr. Woods, you are around this plant, are you, quite often, you say?

A. Yes.

Q. How often?

A. As I said—lately I have not been there as much as I ordinarily am and like to be; usually, every month or six weeks I go through the plant.

532 Q. And how long do you spend there every month or six weeks that you are there?

A. I might spend half an hour, three-quarters, an hour and a half.

Q. And it is your practice to go there about that often?

A. Yes.

Q. Look it over roughly?

A. Generally go through the works.

Q. Do they test for candle power there at the works?

A. I imagine they do, all the stuff is there.

Q. Well, do you know that they do?

A. I have seen them make tests.

Q. You have seen them make tests for candle power right at the works?

A. Yes.

Q. Where is the apparatus set up?

Mr. Ransom: Objected to as not cross examination.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: In the office building.

Q. How do they make the tests?

Mr. Ransom: Objected to as not cross examination, relates to no issues in the affirmative case.

The Master: Overruled.

The Witness: In the usual manner of making tests.

Q. What is the usual manner, the same as you testified in the Consolidated?

Mr. Ransom: Objected to as incompetent and an improper form of question, not the proper method of proving something by reference to another case.

533 The Master: I don't think it is proper, but I will allow Mr. Chambers to ask him what he means by the usual manner?

Mr. Ransom: Exception.

The Witness: Using the standard bar, 60 inch bar.

Q. Burning candles?

A. Burning candles or sometimes in making tests—quite often they might use a secondary standard.

Q. What is a secondary standard?

A. They may use a Pentane lamp—a Pentane lamp would not be called a secondary standard; it is a standard that has been used; it is an English standard. When they did away with the candles and used ten candle power Pentane lamps, they used that as a primary standard the same as an Elliot lamp—that is a secondary standard for quick reading.

Q. Are those the usual methods, the well known recognized methods?

Mr. Ransom: Objected to as incompetent and not within the scope of the cross examination.

The Master: Overruled.

The Witness: Yes.

Q. Do they record the candle power after they make the tests?

A. I imagine so.

Q. In their books?

A. Just wherever they record them, I can't say, probably in their books or on a sheet of some kind.

Q. Does the City make tests there, too, that you know of?

Mr. Ransom: Objected to as not any subject of cross examination.

534 What has that to do with any issue concerning which Mr. Woods testified? In this case the defendants have affirmatively alleged in this court that the candle power question is a matter of affirmative defense and, unless pleaded, they couldn't go into it.

Mr. Neumann: I think that is absolutely absurd and no one knows it better than counsel who uttered it.

The Master: That is enough, I didn't ask for a discussion. Overrule the objection.

Mr. Ransom: Exception.

The Master: Does the City make tests there?

The Witness: They do make tests; I have never seen the City making tests, but I imagine they do.

The Master: Do you know anything about it, do you know where the testing station is?

The Witness: I have seen the buildings where they have the testing apparatus.

The Master: Have you seen the testing apparatus?

The Witness: I don't believe I have seen the testing apparatus of the City's.

The Master: How do you know they have a testing station anywhere?

The Witness: Well, of my own knowledge I imagine I don't know, because I haven't seen the testing apparatus.

Mr. Chambers: Where is the building?

The Master: Where is the building where you understood they tested it?

The Witness: I can't recall the street now, it is some mile or mile and a quarter from the plant. I wouldn't undertake to say what the street was; it is out in the Murray Hill section.

535 Q. Do you know that the City sends the New York & Queens a postal card daily of the tests they make?

Mr. Ransom: Objected to as not proper cross examination.

The Master: I will sustain the objection on the ground I don't care whether they do or do not.

Mr. Chambers: Exception: I think it is pretty important.

The Master: No, that doesn't prove or disprove anything. Just because the City sends cards doesn't prove anything.

Mr. Hyatt: The question is does he know and I think he ought to be allowed to say what he knew if he did know.

The Master: Objection sustained.

Q. Apparently, I gather from what you say, that you never paid much attention to the candle power tests made by the company.

Mr. Ransom: Objected to.

The Master: Overruled.

The Witness: Oh, yes.

Q. I mean, did you look in the book to see how they were running?

A. I don't know as I have looked in their books to see how they were running, but I get a report as to the candle powers.

Q. Who makes that report to you?

A. I get a report from Mr. Spears' office for the month's operation.

Q. He sends that to you at the end of the month?

A. Right.

536 Q. And that report has the candle power on it, I take it?

A. In some part of it.

Q. Of the company's test?

A. The candle power at the works.

Q. Do you know who makes the tests there for the company?

Mr. Ransom: Objected to as not proper cross examination, not within the scope of any issue in the complainant's case.

The Master: Overruled.

Mr. Ransom: I except.

The Witness: I do not.

Q. Who makes the tests in the Consolidated Gas Company for candle power?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Q. Is it the same person who makes the tests for the Consolidated Gas Company for candle power who also makes the tests for this company?

Mr. Ransom: Objected to as incompetent and immaterial and not proper cross examination.

The Master: Sustained.

Mr. Chambers: Two exceptions.

The Master: I am not sustaining it on the ground it is not cross examination. I have permitted Mr. Chambers to go into matters not strictly cross rather than to compel him to bring it out in his direct

case; I would just as lief have it now as any other time, but I don't think it is relevant or material.

Mr. Chambers: The reason I go into it here and treat it as cross is because somehow or other they are afraid, in these cases, 537 to bring on the superintendent—you have noticed that; they never give us a chance to cross examine anybody who acts as superintendent of any plant, we have never had a crack at anybody or a chance to cross examine.

Mr. Ransom: You spent weeks and months cross examining every one you pleased all over the country.

Mr. Chambers: And we have had to use Mr. Woods in lieu thereof.

The Master: I am sustaining it because I don't think it is relevant or material to this issue.

Q. To return to Exhibit No. 77, Mr. Woods, what do you include in your item of miscellaneous work expense?

Mr. Ransom: Objected to as already fully covered; the details of that are given on cross examination and on direct examination.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: As I said, janitors, watchmen, messengers, telephone bills, electric light bills, sundry supplies in the way of stationery, cleaning snow off the holders, such items as that.

Q. You didn't base that on the company's figures?

A. No, I did not.

Q. You just took what you thought—

A. What I believed to be—

Q. About right?

A. That would cover that expense.

Q. And it might be lower and it might not, from your actual experience, is that it?

538 A. It would vary.

Q. Is there any way that you can segregate or separate those items, any of them?

A. I can't because I believe that it will require about a cent per thousand to perform that work.

Q. That is, you couldn't tell us how much it would be for telephones, and how much for removing snow?

A. No.

Q. It would vary, some years it might be more and some years less?

A. That is right.

Q. Isn't that pretty high, that figure you have there, for a plant of this kind?

Mr. Ransom: Objected to as fully covered; it was shown at the last hearing that it was very low, both as compared with the actual experience of this company and the figures of the Consolidated.

The Master: Overruled.

The Witness: I believe it is a conservative figure.

Q. Well, in the Consolidated case, Mr. Woods, you allowed a cent for that same item—a cent and a quarter; do you think there is only that difference there, shouldn't it be considerably less in a small plant like this?

A. If I thought it should have been less I would have made it less, Mr. Chambers.

Q. I know, but you say it varies?

A. It does—all those items will vary from time to time.

Q. How about repair material, what have you included in that item?

Mr. Ransom: Objected to, that is fully gone over, we don't need to start and go over these things today.

539 Q. The Master: Overruled.

Mr. Ransom: Exception.

The Witness: All material that would be required in the repair of the plant and buildings.

Q. Well that is just double what you testified to in the Consolidated, isn't it?

A. Right.

Q. I don't see quite how you make that out, a cent and a half in the Consolidated you testified?

A. As of October, 1919, yes.

Q. Then that has doubled since October, 1919, or has it doubled because it is a different company?

A. Because it is a different situation, a different condition.

Q. In working out Exhibit 77, you have increased the prices in amount because of the difference in time between October and now, have you, in all instances?

A. No, I have not.

Q. That is not the reason for the increase?

A. No.

Q. It is because of the size of the plant?

A. That is right.

Q. And when Mr. Ransom here says, every little while, that it is because prices have gone up, that is not quite the thing, is it?

A. Labor has gone up.

Q. Some, but that isn't the element that caused you to increase these figures in Exhibit 77 over Exhibit 353?

A. Not in the wide variation that appears between the testimony that I gave in the Consolidated and what applies to this proposition; it is a different kind of a plant, a smaller plant.

540 Q. That is what I am getting at, that is why you made those figures higher in Exhibit 77?

A. I have made those figures in 77 as a condition that exists at the Flushing plant, under which they must operate.

Q. Well now, if you made up this Exhibit 77 as of September, 1919, for this same plant, would they have been substantially the same?

A. In so far as unit quantities used per thousand, they would. The price may have varied; the price of labor was probably different; the number of men required, the oil required, the coal required, and so forth—I wouldn't have made any change in September from what is shows there.

Q. Would you have made much of any, in labor?

A. I would have ascertained what their labor rates were at that time.

Q. Well you don't know, as you sit there, that over in Queens they are paying very much more for gas making labor, repair labor, or labor for handling coal, than they were in September, 1919, do you?

A. My judgment is that it is about 25 per cent more, Mr. Chambers, now, than it was as of that time.

Q. That they are paying?

A. Yes.

Q. For labor?

A. Yes.

Q. Certainly, oil and those things would not make any difference between September and now?

Mr. Ransom: I object to the question as vague and indefinite; he has already shown the figures as to the cost of oil then and now.

The Master: Overruled.

541 The Witness: Whatever the difference was in oil and coal, that difference would have been put on that exhibit, what they were paying as of that time.

Q. Who did you get your figures from for prices here, Mr. Woods?

A. Got them from vouchers.

Q. I mean did you go yourself and get them?

A. I did, I had the vouchers sent to me.

Q. From the plant over there?

A. Yes.

Q. Sent it to you?

A. Right.

Q. And you picked out, selected what you wanted?

A. I asked them to give me their current prices that they were paying for coal oil, asked to look at the bills.

Q. And beyond what was on these vouchers you didn't know?

A. The bill and the voucher is what I used.

Q. And you relied on the voucher for your information?

A. I did.

Q. Did you examine very many of them?

A. No.

Q. Just a few?

A. Just a few.

Q. What month did you pick out, say?

A. I don't recall, I think—my recollection is, which may not be absolutely correct, Mr. Chambers, that insofar as generator coal and oil, it applied to bills as of April.

The Master: Of course, Mr. Chambers, what I said in the Consolidated case applies here. I am not taking Mr. Woods' testimony as to prices; I am taking his testimony as to quantities.

542 I am taking his calculation based upon other evidence that there may be in the case as to whether the prices are in fact right—I wouldn't spend much time on that.

Q. Well, that was April, 1920, and what month for labor?

A. Labor, I took current pay rolls about as of today, practically—in April.

Q. What month was that, April, 1920?

A. April, 1920. My recollection is that boiler coal—and I am not absolutely certain, but I think that the bill was of some time in February—my recollection is that they had not received any coal since February. I think the price now would be higher than as indicated on that sheet for boiler coal.

Q. Well, they are using coal on their reserve supply, aren't they?

A. They had some in stock and I don't think they received any, but I think any purchased since that time would be a higher price than as indicated on that exhibit.

Mr. Chambers: That is all for the present, I suspend.

Cross-examination.

By Mr. Neumann:

Q. Mr. Woods, you testified about the factors that went into the question of unaccounted for gas, did you not?

A. I did.

Q. Did you mention among those leakage in gas holder?

A. I said leaks wherever they might occur.

Q. It is true that gas holders do leak?

A. There are times. They usually show, and the leakage is comparatively small. I would not say that there was not at times 543 a leak around a rivet or around a seam, because at times there are leaks developed.

Q. And the holder would be one of the things that should be watched very carefully for repairs?

A. They are kept in good repair.

The Master: No, the question is, they should be watched pretty carefully?

The Witness: They are watched.

The Master: Well, they should be, yes.

Q. All of these factors that go to make up unaccounted for gas are based on estimates or guess, are they not?

A. We know what the unaccounted for is. As to what the different percentages are as a result of condemnation, leakage in mains, leakage in service, slow meters, variation in temperature at which the gas is registered at the consumers' meters, that, of course, is an estimate. The combined, of course, is known, because we know the

amount of gas which has been made, which has been corrected to a temperature of 60 degrees, which is the standard throughout the world for correcting gas temperatures, gas meters, and we know the sum total of the amount of gas that has been recorded on the consumers' meters. The difference between the one and the other is the unaccounted for gas.

Q. Would not also one of the elements be the gas that had already been sent on to the consumers' meters and used and not billed for at the time?

A. Well, naturally, Mr. Neumann—that was brought out in the other case. The production of gas, the amount of gas made during any one month would not represent those consumers' meters 544 as read, would not represent the amount of gas or the same gas that was produced in that month, because the indexes are being taken every day.

Q. And that would be true, too, at the end of the year, wouldn't it? Take for instance as a definite period, December 31st—there would be some gas that had already been consumed by the consumer that had not been paid for up to December 31st of whatever year you take?

A. That would be so, yes. At the same time, the conditions being the same the previous year, and the indexes being taken about the same time, you would get almost an accurate result of the consumption by the consumers' meters for that year. You have that little overlap from month to month.

Q. And from year to year?

A. There might be a small amount from year to year.

Q. I am just trying to get at the facts, Mr. Woods. Now, condensation has something to do with unaccounted for, hasn't it?

A. Yes, that is a result of temperature.

Q. In which system is there more condensation in the mains, in a low pressure system or in a high pressure system?

A. Pressure would produce condensation, both pressure and temperature.

Q. I don't think you have answered my question, Mr. Woods. I will repeat it for you if you want.

A. Well, I gathered—gas under high pressure, you would get a greater condensation than you would under low pressure, because high pressure and low temperature has a tendency to drop out 545 any of the vapors that may be contained in the gas. There is a vapor tension there, and if the temperature or the pressure gets below the point at which the gas can carry it, it will drop out.

Q. Consequently the percentage of unaccounted for would be larger under high pressure than it would be under low pressure?

A. There would be some difference.

Q. Do you know about what the percentage would be?

A. I would not like to say. It would depend upon the pressure and it would also depend upon the amount that was being subjected to high pressure.

Q. Based on your experience, can you give any estimate of what it would be likely to be in, say, a plant of a million capacity?

A. It would only be an estimate, and I would not like to say. It might affect it to the extent of one per cent.

Q. Now, speaking about high pressure, how does that affect the illuminating power of the gas at the place of service?

A. It would have a tendency to affect the candle power, that is, high pressure would tend to drop out some of the illuminants, and condensation to some extent might affect the candle power. That would depend upon the pressure to which the gas was put.

Q. Well, the further away from the service, the further away the service is from the station holder, the lower then would be the candle power, is that true?

A. It would depend. If you should subject a gas to a low temperature within half a mile from the works, and the temperature came up beyond that point, you would not have any drop in candle power, because there would be nothing to drop it out.

Q. Do you recall when the Douglaston mains were completed, Mr. Woods?

A. No, I do not, the date.

Q. You talked in your direct examination about the Douglaston mains and the high pressures, didn't you?

A. Yes, I said they were operating under high pressure.

Q. Well, do you know when they commenced operating under that high pressure?

A. Well, they have had some high pressure there for some time. They used a part of the line that was operating under high pressure, and extended that line to Douglaston.

Q. Do you know when that line was started?

A. I don't recall the date.

Q. Was it some time in 1919?

A. I should say it was, yes.

The Master: Could not Douglaston have been supplied without a high pressure?

Mr. Neumann: May I object to that for the present? I want to develop that situation as I go along.

The Master: I want to know now.

The Witness: It could, your Honor.

Q. Do you know when they commenced to build the extension to Douglaston?

A. I don't recall the date?

Q. Wasn't it some time in 1919?

A. I think it was.

Q. The early part of 1919?

A. That is my best judgment.

547 Q. It would be feasible, would it not, to continue to serve

Douglaston under low pressure if there was a holder erected somewhere in the neighborhood of Flushing?

A. Why, it would be feasible to supply Douglaston under low pressure now if you took into consideration the expense involved in

laying low pressure mains to that district. It is only a question of capital invested.

By the Master:

Q. What is the difference between low pressure and high pressure mains?

A. Because you can operate on a high pressure main, you can run a 4 or 6 inch line where you would want a 10 or 16 inch line under low pressure.

Q. Explain that to me. I don't know about it.

A. Under low pressure they would be running on 4 or 5 or 6 inches of water pressure, in other words, less than one-quarter pound, to make the distribution to that point.

Q. Why would you need a larger pipe or distributing main under low pressure?

A. In order to get it there. For instance, if you use a 4 inch main, which they usually use in this high pressure system, depending on the size, you can put that up to 15 or 20 or 30 pounds, so that the carrying capacity of that main is multiplied 10 or 15 times.

Q. You get the same result by a larger main?

A. You would get the same result by a larger main. The only reason that high pressure systems are put into use at all is a matter of investment, because if you have a long extension to put in where the consumption does not justify, you can easily figure—
548 For instance, like in the Douglaston proposition, the investment in a low pressure system there at the price of gas, the interest on such an investment would be more than the gross income.

Mr. Neumann: I move to strike out that part of the answer about the interest on the investment.

The Master: Motion denied.

Mr. Neumann: Exception.

By Mr. Neumann:

Q. Under high pressure, Mr. Woods, you secure more drip-oil, do you not, than you do under a low pressure?

A. Well, there would be a small amount, yes; it would be infinitesimal.

Q. Have you any idea what the percentage of increase is?

A. No, I think it would be small. I calculated there about one and one-half per cent—that that would be the average. It would very under a high pressure or a low pressure, depending on the quality of the oil.

Q. The difference between high and low pressure is in the blower, is it not, or in the type of blower? To put it another way, you change from a low pressure to a high pressure by installing a different kind of blower?

A. Well, in the case of the Flushing Company, for low pressure the holder itself is of ample weight to give sufficient pressure to deliver gas on to the district throughout the low pressure system. In the case of high pressure you use a compression pump. You draw

the gas from the holder, put it through this piston pump into a cylinder at anywhere from 5 to 10 or 15 pounds, and as high as 40 pounds, and from there it is delivered to the end of the line, 549 and the regulators on the end of the line bring the pressure down to a commercial pressure.

Q. You know what a blower is, don't you, Mr. Woods?

A. Oh, yes.

Q. They are used in connection with high pressure, aren't they?

A. They might use what they call a high pressure blower; they might use what they call a positive blower, positive exhauster on what might be called semi-high pressure. For instance, they use a positive blower or positive exhauster for 5 or 10 pounds. Beyond that point they usually go into the regular reciprocating pump built practically the same as a water pump.

The Master: What has this plant got?

The Witness: Reciprocating pumps, practically piston pumps.

Q. Not a blower?

A. No, piston pumps.

Q. Which is the more expensive, the piston pump or the blower?

A. Well, it depends on its use. There would be very little difference.

Q. Approximately about \$1,000 would purchase either one of them, wouldn't it?

A. I don't recall just what they paid for those. My recollection now is that they have two compressors in the Flushing plant. Just what they paid for them I would not like to say at the moment.

Q. Now, Mr. Woods, is it fair to say of your testimony that a plant of this size in comparison with a larger one does not operate as economically per unit?

A. I don't follow that question.

550 The Master: To put it another way, can you operate a 10,000,000 plant more economically than a 1,000,000 plant.

Mr. Ransom: I object to that question in that form. It is a question of whether certain items become greater per unit of gas produced.

The Master: I will take his statement on this.

Mr. Ransom: Exception.

The Master: Can you operate a 10,000,000 cubic foot plant, having all the consideration in mind?

A. The best way I can answer that is that the production cost of gas in a plant of a million feet capacity would be greater than it would be in a ten million plant.

The Master: I think that is an answer.

Mr. Chambers: I don't think it is quite an answer to that question.

The Master: I think so. He says it will cost more to make a thousand cubic feet of gas in a million cubic foot plant than in a ten million cubic foot plant.

Mr. Hyatt: That is only a half truth, and we ought to have on the record what the distribution cost is.

The Master: We are not talking about distribution now; this witness has not testified about distribution. We will talk about distribution cost when we get to it. I have in mind perfectly that the distribution cost in these schedules is about thirty cents, as against a finding in the Consolidated Gas that it should be about twenty. We will have it before this case is over.

551 Q. Now, Mr. Woods, taking the same question and applying it to the capacity of two million in comparison with a plant of ten million, would you say that it could be run as economically?

Mr. Ransom: I object to the form of the question.

The Master: Objection sustained. I will let you ask him whether he can produce gas as cheaply per thousand cubic feet, in other words, whether it would cost more to produce a thousand cubic feet in a two million plant than in a ten million plant.

Mr. Neuman: May I ask the Master on what ground he sustains that objection?

The Master: On the ground that the question of economical operation is not the question here. It is a question of the cost of production, which includes the cost of operation.

Mr. Ransom: Both plants might be operated just as economically, and yet in one gas would cost more per thousand cubic feet than in another.

The Master: That is what I had in mind.

Mr. Neumann: If I understood Mr. Woods' testimony, he was permitted on direct examination to base his answers on many questions that were pure hypotheses.

The Master: I am allowing you to bring out—.

Mr. Neumann: But you are reframing my questions and not to bring out the point I want to bring out.

552 The Master: On the question of economical operation, you can operate a million cubic foot plant, or a ten million cubic foot plant, or a thirty million cubic foot plant economically. You can operate them all as economically as it is possible to operate any plant. In other words, what I am trying to make clear is—and I will put it in the form of questions to Mr. Woods—

There isn't any reason why you cannot operate a million cubic foot plant economically, is there?

The Witness: There is not.

The Master: Or a two million foot plant?

The Witness: That is right.

The Master: Or a ten million foot plant?

The Witness: That is right.

The Master: Or a thirty million foot plant?

The Witness: That is right.

The Master: And a gas man ought to be able to operate any one of those plants as economically as another, having in mind the conditions?

The Witness: Yes, sir.

The Master: The cost of production will change?

The Witness: Yes, sir.

The Master: In other words, running it just as economically, and taking just as much care in the production of the one company as the other, you won't get as good a production cost result in one as in another—is that your point?

The Witness: That is right.

The Master: I will let you cross examine him in any way you like on that.

Mr. Neumann: You have asked the questions that we had in mind and were trying to develop.

553 The Master: As usual, I know what you want and get the question, and you fellows fuss around with it and don't get it.

Q. Now, Mr. Woods, would you say then that a plant of say two million capacity, it would be for the best interests of the company to have as large a send-out as possible?

Mr. Ransom: Objected to as vague and meaningless.

The Master: I will allow it.

Mr. Neumann: He has testified.

The Master: Don't argue, please, when I have ruled on it. Let us see if we can't get rid of this case without a lot of discussion on the record.

Mr. Neumann: Well, if Judge Ransom will only keep quiet—

The Master: And you will keep quiet.

Mr. Ransom: I have a right to make an objection.

Mr. Chambers: Mr. Neumann has to make a lot of noise to ask a question.

The Master: Ask your question.

Mr. Neumann: I have asked the question. It is unanswered.

The Master: Answer it.

A. Based on the experience of the last two or three years it seems to me the more we make the more we lose.

The Master: The question is a very simple one. Taking a two million foot capacity plant, to get the best results you ought to get all the send-out possible—is that so or not?

554 The Witness: It would be better—whatever the capacity of the machine would be it would be a good thing in the interest of better operation, more economical operation, to be operated at the full capacity of whatever the machine might be.

Q. Therefore, it would be to the best interest of the company to obtain as many consumers as it possibly can in order to increase its send-out up to its capacity?

Mr. Ransom: I object to that. He has not said any such thing.

The Master: Objection overruled.

Mr. Ransom: The question is vague and meaningless and inexact.

A. When you refer to getting as many customers as possible, you have to consider where they must get those customers from, and how much it is going to cost to get those customers, and what it is going to cost to handle them. It might be that a slight saving at the plant would be more than offset by your large investment or the expense of handling it on the outside. That would be a question of the particular business you were looking for.

Q. Now, the Queens Borough, where this plant is located, is a growing borough, is it not?

A. Yes.

Q. It is the one of the five boroughs that has made the largest increase, taking the two last censuses into consideration?

Mr. Ransom: I object to that as immaterial unless it relates to the particular area. Queens Borough is a large community and a large part of it is essentially rural.

Q. This is the only plant out there, isn't it?

Mr. Ransom: It is not the only plant in Queens Borough.
555 The Master: From my knowledge of the extent of Queens

I shall sustain the objection on the ground that it is too wide a question.

Mr. Neumann: Exception.

The Master: You can limit your question to the territory covered by this gas company?

Mr. Ransom: The Third Ward, that is the Flushing territory.

Mr. Neumann: Well, all right, I will reframe the question. Instead of making it Queens Borough——

The Master: Without knowing precisely the extent of Queens I should say it is several times as large as Manhattan.

Mr. Neumann: I will confine it to the Third Ward.

The Master: The question is do you know whether there has been a tremendous increase in the Third Ward of Queens as compared with other boroughs and other sections of other boroughs?

Mr. Ransom: Since when?

The Master: Oh, in the last ten years.

A. Why, comparatively speaking. As I recall the Third Ward in Queens it is about the size of the Borough of Manhattan.

The Master: The Third Ward of Queens alone?

The Witness: The population that they supply is somewhere between 35,000 and 40,000 people against 3,000,000 or 4,000,000 here. Of course it has great room to grow.

Q. You know as a fact, do you not, that Queens has been growing, including the Third Ward, or the Third Ward of Queens has been growing?

556 Mr. Ransom: Objected to as not within the scope of this inquiry unless limited to the Third Ward.

The Master: He has limited it to the Third Ward. It has grown, hasn't it?

The Witness: It has grown and is growing I think. To what extent I do not know.

Q. In your judgment, Mr. Woods, it should be the policy of this company to invite more consumers rather than to endeavor to keep them out, should it not?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Ransom: The company has to serve everybody who comes within the statutory requirements.

The Master: My reason for sustaining the objection is that it has already been answered. The witness has fully described the reasons that might operate against taking on more customers unless they had to.

Mr. Ransom: That is customary outside of the statutory requirements.

The Master: They have got to supply their territory.

Mr. Ransom: When it comes to a matter of long extensions why then certain other questions are presented.

Q. Mr. Woods, do you know the reason why the Douglaston extension was not started until 1919?

Mr. Ransom: I object to that as incompetent—

Mr. Neumann: The condition of the record at the present time is this: They have put in an order from the Public Service Commission indicating that in the year 1915 they were directed to build this extension to Douglaston. The testimony at the present time is that they did not commence to build it until 1919.

The Master: I understood they finished it in 1919.

Mr. Neumann: I am asking this witness whether he knows why they didn't commence.

The Master: Didn't he say they finished it in 1919?

Mr. Neumann: They commenced it in 1919 and finished it in 1919.

The Master: What materiality has it in this record as to why it was delayed for four years? Why should I go into that collateral issue?

Mr. Neumann: The fact is that they resisted the building of this extension and took the case up to the Supreme Court of the United States, all the way through the State Courts.

The Master: What has that got to do with this issue?

Mr. Neumann: In view of the witness' testimony I think it is quite important.

The Master: Why is it important?

Mr. Neumann: As indicating that whoever resisted the order used poor judgment.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Ransom: It is costing this company about \$6 a thousand cubic feet to supply this Douglaston area.

The Master: I sustained the objection.

558 Mr. Hyatt: Strike that out. I don't see why counsel should testify. That happens so very often during the course of this trial that somebody ought to sit on him.

The Master: You are wasting time.

Mr. Ransom: There should be no comments here by persons who have no right in this case.

The Master: Don't take any more, Mr. Stenographer.

Q. Mr. Woods, you testified about the continuous running of gas machines. I believe your testimony was to the effect that they ran 24 hours. By that you mean that its actual running time is only 19 hours, do you not?

A. No, it depends on the cleaning time, the number of cleans, the amount of time required to make a clean.

Q. Is it not a fact that no machine runs continuously for 24 hours?

A. In our calculations we consider them in operation throughout the 24 hours, including the cleaning time.

Q. What is that cleaning time?

A. That would depend entirely on the character of the fuel as to how long that will require.

Q. What is your experience generally speaking?

A. That it will vary. You can clean a machine in 50 minutes sometimes, and sometimes it will require two hours or two hours and a half. If the coal is bad, bad clinker formation, there are times when it requires as much as two and a half hours and there are other times when you can clean them in 50 minutes.

559 Q. Now, before you can clean a machine you have to allow it to cool down, do you not?

A. Oh, no.

Q. You clean it while it is red hot?

A. Absolutely.

The Master: Of course it cools down while you are cleaning it?

The Witness: No, it does not cool down much as a rule. The generator itself, that is where the coal is, of course you may draw your fire a little to get it a little low. It depends on the fuel. There are times when you can have a full fire and clean, when the clinker and ash is at the bottom. If you get much on the side of the machine then it is necessary to bring the fuel down. Under ordinary conditions you have from 6 to 7 or 8 feet of fuel in these generators, and there are times when you have to run your fire down before you clean, if you have much side clinker formation, in order to get the bars in and clean them out. The carburetter and superheater, generally speaking, get a little bit hotter during the cleaning than beforehand, as a result of opening the doors at the bottom with the draft passing through to heat them up. After cleaning and cooling it requires a little bit longer to blow, because you usually put more coal in at that time than you do under ordinary running conditions, which means that you coal up about once every hour.

Q. Mr. Woods, based on your experience in the Consolidated system, is it not a fact that so far as boiler fuel is concerned, in order to produce a thousand cubic feet that you have to use as low as twelve pounds?

550 A. Yes, and as high as seventeen.

Q. That is right. That has been your experience in the Consolidated system?

A. Yes.

Q. Now, Mr. Woods, would it not be fair to say that drip oil and water gas tar when used for boiler fuel purposes by any company should have the same money value equal to its coal equivalent?

A. It has a value which would depend—

Q. No, I think that calls for a direct answer.

Mr. Ransom: He is answering—

The Master: No, I think he is entitled to it. That is a perfectly simple question. Ought not the company to charge itself with the value of the tar and oil used for fuel upon the basis of what it would have to pay for coal for the same result?

The Witness: Yes, I think that would be fair.

Mr. Neumann: That is what I want.

The Witness: I wanted to qualify this to this extent, which of course would not make a particle of difference in their operating cost. It might be—

Mr. Neumann: I move to strike that out, because it is beyond the question.

The Master: I will take the witness' explanation of his answer. I understood him to say a long while ago that it did not make any difference in the net result, because if they charged themselves with the price which would represent the fuel they would have to credit themselves with the same amount.

The Witness: What I was going to say was—

561 Mr. Neumann: If the Court please, I think that was beside the question. I think that was a perfectly simple question, and the answer to the question speaks for itself.

The Master: I will let the witness make any explanation he wants with reference to it.

Mr. Neumann: Exception.

The Witness: I was only going to say that there might be conditions whereby the tar might be worth four or four and a quarter cents a gallon, as compared with the coal we could buy. The selling price of that tar, however, it might be that you couldn't get anything for it, you might get two or two and a half cents a gallon. Now, you might charge yourself with what you could dispose of that tar for. It would not make a particle of difference in your production cost, because it would be a debit on one side and a credit on the other, and whether it was put in at three or four or six cents would not make a particle of difference.

The Master: I understood you to say that a long while ago. Go ahead.

Q. Now, what is the general average time that a water gas machine will run without overhauling?

A. Well, that depends upon the character of your fuel and the amount of ash that might go over into your carburetter and superheater. We figure that we can always operate on 800 hours so far as the carburetter is concerned. There are times when fuel conditions are good that you can run longer than that. A superheater at times will run longer than that. There are times at peak loads 562 that we have had to run considerably longer without any material drop in the efficiency of the apparatus.

Q. Would you say that a machine that was kept up to fairly good efficiency would run without interruption for eight hundred hours without overhauling?

A. Without a general overhauling, yes. There might be minor repairs, there might be a broken hot valve, or some of the blast valves might become leaky, or a stack valve might develop a leak, something happen to some of the connections whereby you might have to shut it down for two or three hours or for a day, which would be damage of some kind that happened to the machine during its ordinary course of operation.

Q. Based on your experience, and that is what you figure for the Consolidated system, that a machine ought to run about eight hundred hours?

A. Yes, it will run eight hundred hours.

Q. Now, do you know whether this company keeps any records of any kind as to when its machines are in operation or out of operation?

A. Of my own knowledge—I imagine they have those records. I cannot say that I have seen them.

Q. You keep such records in the Consolidated system, do you not?

A. We do.

Q. What are they called with that company?

A. Well, we only keep a record—that is, it is a works' record, more of a statistical record for the purpose of examining and seeing just how long the different machines are running. That is what we call a record of operations and results.

Q. Now, Mr. Woods, going back to Exhibit 77, you have a little foot note here on the bottom of this exhibit in which you state 563 "additional boiler fuel used on account of the steam used for high pressure transmission in supplying Douglaston extension under order of the Public Service Commission for the First District—"

A. Right.

Q. Isn't that part of the transmission cost, the distribution cost?

Mr. Ransom: I object to that.

Mr. Neumann: I think the witness ought to be allowed to answer. You are yelling all the time.

The Master: I think Mr. Neumann is not called upon for a speech.

Mr. Ransom: Boiler coal is not under the uniform system of accounts a part of the cost of distribution.

The Master: The question is asked of Mr. Woods, is that additional coal part of the distribution expense?

Mr. Ransom: What is your Honor's ruling?

The Master: I am overruling the objection.

Mr. Ransom: Exception.

A. It might be considered a distribution charge. However, the boilers, etc., that operate the plant perform that work. If you wanted to take out of the manufacturing and add that coal on to distribution it would not make a particle of difference.

Q. You also generate steam, do you not, for the transmission of gas?

The Master: What is that?

Mr. Neumann: I will withdraw the question.

Q. I will direct your attention, Mr. Woods, to Exhibit 77, the third item, Boiler Coal. That item of Boiler Coal contains 564 coal that is used to produce steam for transmission pumping, does it not?

A. That is right.

Q. Transmission pumping takes place after the gas is manufactured, does it not?

A. Naturally.

Q. Directing your attention to the fourth item Labor, Handling, Carting, etc., the handling of coal also relates to transmission, does it not, part of it?

A. In so far as the amount of boiler coal used for transmission purposes is concerned that would apply, yes.

Q. Generally speaking, based upon your experience in the Consolidated System, what did you allow, approximately, for transmission out of that item?

The Master: What difference does it make, Mr. Neumann?

Mr. Neumann: Quite some difference.

The Master: What?

Mr. Neumann: Quite some difference, because it will reduce the cost of manufacturing gas from their figure—

The Master: Then you have to put in the figure for cost of distribution, have you not?

Mr. Neumann: They may be duplicating both items; we have not both exhibits here. I think that if we are confining ourselves to the exhibit that is supposed to indicate the cost of manufacture, only those items that go into the cost of manufacture and in part of distribution should be in that exhibit.

The Master: That will be a matter of analysis of figures later. I do not think you need any more time on that.

565 Mr. Ransom: This company could not disregard the Uniform System of Accounts and follow the temporary suggestion of the temporary representative of counsel for the Commission.

Mr. Neumann: I resent that, and I think it should be stricken from the record.

The Master: All right now; you have resented it.

Mr. Neumann: I cannot quite understand what he means by "temporary."

The Master: I cannot, either.

Mr. Neumann: And to say the least it is very ungentlemanly.

The Master: Proceed.

Q. Mr. Woods, generally speaking, based on your experience in the Consolidated System, in this item that I have just spoken of is not the general average one-third for manufacture, one-third for auxiliary purposes, and one-third for transmission purposes?

A. I have never known any division of that kind.

Q. In this Exhibit 77, Mr. Woods, have you made any allowance here for gas used and consumed at the plant?

A. The gas used at the plant would be indicated—my recollection of the accounts is that it is put in Miscellaneous Works Expense.

Q. Then this figure of one cent per thousand for miscellaneous works expense would include gas used at the works?

A. That would be a charge against that account, yes.

Q. You have no knowledge, have you, of just how much gas they use or consume at the plant?

566 A. No, not any specific amount.

Q. The books, if anything, would show that?

A. In all probability, yes.

Q. There is no separate record kept, so far as your experience goes, of that, outside of the books?

The Master: What is the use of wasting time? Exhibit 64 shows miscellaneous works expense at .39 of a cent, and shows that there was used by the New York & Queens during the year 1,933,330 cubic feet.

Mr. Tobin: It does not show that particular item, does it—that particular item of gas used at the plant—as a part of that?

The Master: Used by the New York & Queens Gas Company. I suppose that must include the gas used at the plant. Where else would they use it, Mr. Woods?

The Witness: I do not know, but I imagine that might include the gas used at the offices and other places where they might have used the gas.

Mr. Ransom: That includes gas used at the offices and at the shop.

Mr. Cummings: I think we ought to know whether Mr. Woods is taking that into consideration in his hypothetical plant.

The Master: What is that?

Mr. Cummings: I think we ought to know whether he has taken that into consideration.

The Master: But he has already said in his cent he included that. But Mr. Teele's figures taken from the books, as against his estimate of a cent for miscellaneous works expense, shows .39 of a cent, and

567 apparently does not include the gas used by the company as part of the works expense cost. That is carried as a separate item, used by the New York & Queens.

Mr. Cummings: Mr. Woods seemed to be, to my mind, a little bit in doubt as to whether he had included that.

The Master: No, I do not think so.

Mr. Cummings: He said it ought to be charged to that.

The Master: I do not think he was in any doubt.

Mr. Cummings: Did you charge it that way?

The Witness: I did.

Mr. Cummings: What?

The Master: In his statement of what was included in miscellaneous works expense he said that it included electricity, watchmen, messengers, telephone, gas, electricity. That was his testimony right along.

Mr. Tobin: The point about it is this, if the Referee please: there is with some gas companies a separate item and a separate account taken of the actual gas used at the plant, that is entirely independent of gas used at the offices of the company.

The Master: Well, they probably have it here.

Mr. Tobin: And in some companies it runs to quite a big item. That is the reason why we ask as to where it might be found in this calculation of Mr. Woods.

Mr. Cummings: Now you see he does not know how much that is.

The Master: Next question.

568 **Mr. Cummings:** He has no knowledge about it.

Q. Mr. Woods, do you from time to time look over the reports of the various companies operating in the vicinity of New York?

A. Do you mean other companies?

Q. Other gas companies outside of your own system.

A. I look over the reports they file with the Public Service Commission at times.

Q. That is what I mean, yes. Did you look over them for the year 1919?

A. I have not.

Q. The report filed by the Brooklyn Union Gas Company for the year 1919 indicates that they only use 31—

Mr. Ransom: I object to that method of reading in the report of the Brooklyn Union. I offer to place in evidence the entire report of the Brooklyn Union Gas Company.

Mr. Cummings: That is an old stunt of yours, Judge, to get things into the record.

Mr. Neumann: He said from time to time he familiarized himself with these reports and read them and looked them over. He ought to, if he is a competent man, know what other companies are doing and how much they are using.

Mr. Ransom: If the Commission will publish the 1919 reports, as we tried to get them to do, we will know those things.

The Master: I shall permit Mr. Neumann to ask the question.

Mr. Ransom: That is not a question, that is a statement.

569 **Q.** The report filed by the Brooklyn Union Gas Company for the year 1919 indicates that they only used 31.68 pounds of generator fuel to make a thousand cubic feet of gas?

The Master: What is the question? For what year is that?

Mr. Neumann: 1919.

The Master: Do you know whether that is so or not, Mr. Woods?

The Witness: I do not. I should say that they used more.

Q. You would say that they used more?

A. That is my judgment, yes. I have not seen the figures.

Q. Notwithstanding the report that they made to the Public Service Commission?

A. I do not know.

The Master: The witness has said he does not know anything about the report, that he has not seen it.

Mr. Ransom: I offered to put the report in evidence.

The Master: That is why you will get nowhere with that inquiry.

Mr. Neumann: Well, if the Master does not think that line is useful I do not want to lumber up the record with—

The Master: I do not see how it can be. The witness will simply say, "I do not know what they are reporting, I do not know what they are doing."

Mr. Cummings: Then for the purpose of testing his judgment.

The Master: How do you test it? You do not prove anything.

Mr. Cummings: But we can determine whether or not his 570 judgment is sound.

The Master: Would you say, for instance, that a report made by this company, to which reference has just been made, is correct; and he says no, it cannot be correct, they cannot do it at that. Where do you get?

Mr. Cummings: Then it shows bad judgment, does it not?

Mr. Neumann: It seems to me before a witness undertakes to testify in any particular year what particular quantities they used, one of the factors that he ought to take into consideration is the published and available data of other companies bearing upon that subject.

Mr. Ransom: It is not available.

Mr. Neumann: What is the use—the young man, Mr. Ransom, is impulsive; he cannot restrain himself.

Mr. Hyatt: He has got a wonderful sense of humor, too, besides.

The Master: Is there anything else, Mr. Neumann?

Mr. Neumann: No, I think I have demonstrated the point I wanted to make.

The Master: That is not what I wanted to know. Is there anything else you want to ask this witness?

Mr. Neumann: There is no need repeating the questions as to all of the items, because it is quite apparent that the witness would answer the same question by the same answer.

The Master: Why, certainly. Anything else?

571 Mr. Cummings: I think Mr. Neumann ought to be allowed to show Mr. Woods used bad judgment in those things, based on the New York & Queens report.

The Master: Does the District Attorney of Queens want to ask a question?

Mr. Cummings: It is like telling a man that they cannot put you in jail when he is there.

Mr. Ransom: I should like to say that this effort to come in and represent the Corporation Counsel is not with his authority, there is no one representing the Corporation Counsel in the case with his authority. It is no doubt a very commendable thing for Mr. Hyatt to come in here and wish to participate in the case.

Mr. Hyatt: That is another indication of that sense of humor.

Mr. Neumann: Before Mr. Hyatt proceeds, may I ask just this one question?

Q. Does this Exhibit 77 contain any charges, of any kind, for storage?

Mr. Ransom: Of what?

Mr. Neumann: Of gas. What would you think, peanuts?

Mr. Ransom: Of coal.

By the Master:

Q. Does it contain any item of gas storage expense?

A. The gas storage would be included in this.

Q. Miscellaneous works expense?

A. Because their storage holders are at their plant, and it is included in the works operation.

Q. It is included in miscellaneous works expense?

572 A. Whatever expense attached to that would be in there.

Q. As part of plant operation?

A. Part of plant operation, as far as the Flushing plant is concerned?

By Mr. Neumann:

Q. The gas is stored after it is manufactured?

A. Yes.

Mr. Neumann: That is all.

The Master: So far as Mr. Hyatt is concerned, I shall continue to recognize Mr. Hyatt as counsel for the District Attorney of Queens, until the District Attorney of Queens by some formal statement on this record removes Mr. Hyatt as his counsel. Proceed, Mr. Hyatt.

Mr. Ransom: Exception to your ruling.

Cross-examination.

By Mr. Hyatt:

Q. Directing your attention, Mr. Woods, to Exhibit 77, do you know of your own knowledge that this company, the complainant company, has for the past year used on an average, per 1,000 cubic feet sold, 37 pounds of anthracite coal to manufacture its gas?

Mr. Ransom: Objected to as an wholly inaccurate statement. Exhibit 64 shows no such thing.

The Master: The objection is sustained upon the ground that the witness has not attempted by Exhibit 77 to say what this company has in fact used.

Q. Does this witness know of his own knowledge the amount of generator coal and the pounds of generator coal per 1,000 cubic feet manufactured?

573 The Master: That this company has actually used?
Mr. Hyatt: That this complainant has used.

The Master: During the year 1919?

Mr. Hyatt: For the past year or so.

The Master: Do you know that of your own knowledge, Mr. Woods?

The Witness: Why, I have seen the figures, your Honor. I do not recall them at the moment.

The Master: This Exhibit 77 does not purport to show that?

The Witness: No, that exhibit purports to show what a good operation would be.

Q. Do you know of your own knowledge that this complainant company has for the past year used on an average 4.2 gallons per 1,000 cubic feet of gas sold in the manufacture of its gas?

Mr. Ransom: Objected to on the grounds previously indicated.
This exhibit does not relate to—

The Master: Where do you get that 4.2 from, Mr. Hyatt?

Mr. Hyatt: I will withdraw that question.

Q. Do you know, Mr. Woods, of your own knowledge the amount of gas oil per 1,000 cubic feet of gas manufactured, used by this complainant company in the manufacture of its gas during the past year?

A. I have seen the reports—

Q. I only want an answer yes or no.

The Master: Can you now at this minute tell us of your own knowledge what those figures are?

574 The Witness: I cannot recall the figures, your Honor. I have seen the figures, but I cannot recall them at the moment.

The Master: Next question. Exhibit 77 does not purport to show what the company actually used?

The Witness: No, sir.

Q. Do you know of your own knowledge at the present time how many men are employed by this complainant company and have been for the past year, making gas in the works or manufactory of the complainant company?

Mr. Ransom: Objected to on the grounds previously indicated.

Mr. Hyatt: Does he know of his own knowledge, yes or no.

The Master: I will allow this question.

A. I have known the number of men employed. The number of men employed has varied from time to time. I could not recall and I do not know the number of men they had each particular day, no.

Q. Do you know how many men they have been employing during the past year on an average, per day, in the work of repairs?

Mr. Ransom: Objected to on the grounds previously stated.

The Master: I will sustain it upon the ground that the witness' answers to previous questions would indicate that he is not prepared at this time to testify from knowledge as to any of these items on Exhibit 77, and that this Exhibit 77 is intended to be and purports to be only his estimate of what there should be there, without a representation that they do or they do not have.

575 Mr. Hyatt: Then I am going to ask him to enumerate, if your Honor please, what are the sources of his information with respect to Exhibit 77.

Mr. Ransom: I object to that.

The Master: Ask your question and I will rule on it.

Q. When you prepared this Exhibit 77, Mr. Woods, what information did you use in compiling the cost, for instance, of anthracite coal for the generators?

The Master: Objection sustained upon the ground that it has been sufficiently covered.

Mr. Hyatt: Exception.

Q. The same question with respect to boiler coal?

The Master: And as to all the other items.

Mr. Hyatt: And as to each and every other item appearing with reference to the cost of materials on Exhibit 77.

The Master: The question is not allowed, because it is sufficiently covered.

Mr. Hyatt: Exception.

Mr. Cummings: It clearly appears that it is a creation of his own, it has nothing to do with the New York & Queens.

The Master: If anything clearly appears, I am right in my ruling that it is covered.

Mr. Cummings: You certainly are not. He has created out of his own mind a plant which he thinks resembles somewhat this plant.

576 The Master: Then that is what clearly appears.

Mr. Cummings: He admits that it has nothing to do with this plant.

The Master: Then that clearly appears.

Mr. Hyatt: May I state, your Honor, if he does not know what this plant actually does, how can he draw a schedule to use for hypothetical purposes, unless he is familiar with the facts of this plant.

The Master: Next question; I will argue that with you later.

Mr. Hyatt: All right.

Q. Mr. Woods, you have three generators in this complainant company's plant; what is the rated capacity of generator A?

Mr. Ransom: Objected to.

The Master: You mean by generator A which one, the big one?

Mr. Hyatt: I am going to adopt A, B, C.

The Master: You have to adopt A to something. Is A the big one?

Mr. Hyatt: I am going to eliminate it by a process of putting the label on each one.

By the Master:

Q. You have two of one size, as I recall it, and one of a larger size. You have two of one size?

A. Yes.

Q. What size is that?

A. Two are 7 foot 6, and one 8 foot 6.

Q. Two of them 7 foot 6 and one 8 foot 6; is that right?

A. Yes, that is right.

Q. Take the 8 foot 6 as machine A, what is its rated capacity?

A. It will make from one and a half to one million six hundred thousand a day.

Mr. Hyatt: That is not an answer to my question, may it please your Honor. I want to know what its rated capacity is when 577 it is sold to this company. When it is sold it has a certain rated capacity, and I want to know what that is.

The Master: I will find out.

Q. What is its rated capacity?

Mr. Ransom: Rated capacity is given a definite meaning by the defendant commission.

The Master: That is what I am going to find out.

Mr. Hyatt: It may mean a lot of things.

Q. What is its manufacturing rated capacity?

A. A million and a half a day.

Q. Machine B will be one of the 7 foot 6 machines?

A. Yes.

Q. What is the rated capacity of that?

A. I think they have been rated at 750,000, and with a little higher blast they can make a million apiece.

Q. So machine C means the same as the other 7 foot 6,—would be the same answer, would it?

A. That is right.

Q. It is rated at 750,000?

A. 750,000.

By Mr. Hyatt:

Q. Do you know of your own knowledge, Mr. Woods, if at any time during the past year either or any of these machines have been operated to the extent of their rated capacity?

Q. I am quite sure they have.

Q. Do you know of your own knowledge?

A. Well, I have made inquiries as to the amount of gas made in the machines that were operated.

578 Q. No, do you, yes or no, know of your own knowledge how many times either or any of these machines have been operated to their rated capacity during the past year?

A. Well, I know from my experience with that type of machine and its method of operation that it will produce that amount.

Q. No, I do not want that. If you will, just kindly answer the question yes or no.

By the Master:

Q. You are not over at that plant except as you have stated?

Q. No, very seldom, your Honor.

Q. Then you cannot state it of your own knowledge?

A. Not just what that machine has done, no.

The Master: Why don't you say so?

By Mr. Hyatt:

Q. Yet you have prepared a schedule based upon your knowledge of what this plant ought to do, have you not?

A. I have.

Q. How could you prepare any such schedule without knowing what the conditions of operation were in this complainant plant?

Mr. Ransom: That is objected to as argumentative and vague.

The Master: Overruled.

Mr. Ransom: Exception.

A. I do inquire as to their operation. I keep in touch with the plant and know what they are doing.

Q. What do you mean by keeping in touch?

A. Well, I make inquiries. I do not go there and make the gas, but I make inquiries as to their method of operation and what the works do.

579 Q. Do you take somebody else's word for it?

A. Why, of course, if I am not there I must take somebody else's word.

Q. Do you ever go there and examine for yourself?

A. Examine what?

Q. The operation of the plant.

A. I do.

Q. How many times a week?

Mr. Ransom: Objected to as fully covered.

The Master: Objection sustained.

Mr. Hyatt: I take an exception to that.

Q. You have testified now—I want to direct your attention, Mr. Woods, to this unaccounted for gas. You have testified to condensation in the mains, have you not?

A. I have.

Q. How many feet are your pipes put below ground?

A. I do not know; they probably have an average depth of three feet.

Q. What is the temperature of the ground during the winter time at that depth?

Mr. Ransom: Objected to as absurd.

Mr. Hyatt: I want to find out whether there is condensation or not, or precipitation.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It will depend upon the depth of frost.

Q. What is the average temperature? You are an expert gas engineer and I would like to know.

Mr. Ransom: Average temperature of what—of the frost, or the air, or what?

Mr. Hyatt: I did not interject frost, Judge Ransom. I asked him what the temperature of the ground about the pipes was during the winter time.

580 A. It is assumed, I believe, in this vicinity, Mr. Hyatt, that except under extreme winter conditions, a long period of time where there might be frost, if the pipes are laid below the frost line—

Q. Why do you answer that way?

The Master: I rule that Mr. Woods is answering the question and ought to be permitted to answer.

Mr. Hyatt: If he is an expert he can tell us that immediately, your Honor.

By the Master:

Q. What did you assume, Mr. Woods?

A. That the average temperature beneath the frost line of the ground is 60 degrees.

Q. It is what?

A. It is 60 degrees.

Q. 60?

A. Yes.

Q. And where is the average frost line?

A. Well, that may be anywhere.

Q. Is there any knowledge on the part of engineers as to where it is usually?

A. No, because ordinarily you do not get three foot of frost, but in extreme weather or under extreme condition it may be 4 to $4\frac{1}{2}$ feet.

Q. That is what I am trying to get at. Ordinarily you do not find the frost below 3 feet?

A. No.

Q. So your temperature at $3\frac{1}{2}$ feet is ordinarily 60 degrees?

A. Yes.

By Mr. Hyatt:

Q. So you put it down there to get away from the frost?

A. Yes.

581 Q. There would not be any condensation in the pipes, would there, any hydro-carbons in this gas, at 60 degrees temperature?

A. At 60 degrees, if it was not below that. If there were points in the line where the mains, as the result of other sub-surface construction, were three feet, it might go lower than that.

By the Master:

Q. But where it is below three feet and the frost has not gotten below the three foot line and the temperature remained at 60 degrees, there is not this condensation?

A. There is not condensation below 60. I will qualify that to this extent, your Honor, that there is a certain condensation going on in the mains that is not reflected in unaccounted for gas, in that we might register the gas at the meter at 75 or 80 and it would go into the holders, and during the summer months the temperature of the gas in the holder might be 75 or 80, although it had been corrected in so far as volume is concerned down to 60; that gas passing out of the holder into the mains will drop its condensation from the 75 or 80, that it might be in the holder, down to 60.

Q. To where you figured it, 60 degrees?

A. Yes. So there would be, so far as actual unaccounted for is concerned, the difference between the consumers' meters and—

Q. The corrected make?

A. The corrected make; there would be no difference.

Q. But there still would be a condensation?

A. There would be condensation.

582 By Mr. Hyatt:

Q. That is only in the summer time?

A. In the summer time, yes.

Q. You do not mean to tell me, Mr. Woods, that gas companies build gas mains and holders with a view to inviting condensation and the loss in the hydro-carbons to consumers' premises, do you?

A. No, they do not invite those things.

A. Yes.

Q. And there would not be any condensation in the consumers' premises if the consumers' premises were above 60 degrees, would there?

A. No.

Q. In other words, there is a point of saturation here with reference to this gas, and when that point of saturation is reached that means that the gas contains all the hydro-carbons that it possibly can, and if it gets below that temperature there is precipitation of hydro-carbons; isn't that true?

A. Oh, that would vary; it would depend.

Q. Isn't it true, now?

A. No, it is not true absolutely. You are trying to confuse things.

Q. I am not trying to confuse anything; I am trying to get something on the record here that ought to be explained.

A. No, I am telling you this—

The Master: Mr. Hyatt, it is conceded, is it not, that there is some unaccounted for gas?

Mr. Hyatt: Certainly, it is conceded, but I do not like the way that he accounts for it; it is hazy.

583 The Master: What is the point of your cross examination; what is it you are trying to bring out?

Mr. Hyatt: The point is he says 7 per cent, 7 and a fraction, or even 11 per cent under some circumstances, is not an excessive amount of unaccounted for gas, and it seems to me that all the factors he enumerates in his causes for unaccounted for gas could easily be obviated by gas companies constructing their distribution system in such a way that it need not happen.

The Witness: It does happen, Mr. Hyatt, and it happens with all companies.

Mr. Hyatt: I know, but just think of a company doing business and losing 10 per cent of its product all the time; imagine that.

The Master: In the Kings County case, according to Judge Greenbaum's decision, it looks as if they lost 18.

Mr. Hyatt: Yes, that is a fact, your Honor, but that is one of the things that Judge Greenbaum said indicated inefficiency.

The Master: Let us assume now that your contention is the mains should be laid lower than three feet.

Mr. Hyatt: I do not assume that, your Honor; I am not an engineer. I am asking Mr. Woods—

The Master: There must be some purpose in a line of inquiry. There must be something that you want to develop, not a mere line of talk.

Mr. Hyatt: I am not talking. I am trying to get something on the record.

584 The Master: I want to find out what you are trying to establish. It seems clear to me that the gas companies lose gas, they lose gas among other things by reason of condensation; condensation occurs, among other reasons, because the frost will get down below the pipes. Is it your point that they must lay their pipes 4 feet or 5 feet below the ground?

Mr. Hyatt: That is not my point.

The Master: Or that it is bad judgment for them to take three feet? I want to see what you are driving at.

Mr. Hyatt: Well, your Honor, I beg to differ from your attitude.

Mr. Cummings: You are asking Mr. Hyatt to construct a model plant here. That is going too far.

The Master: I do not know what he is driving at. Ask your next question.

Mr. Cummings: You are asking him how he would build it.

Mr. Hyatt: It is a question of the company's—

The Master: I did not ask for a statement, Mr. Hyatt. Ask another question.

Q. Do you think that is a model plant, Mr. Woods, that loses 11 per cent of its product in the course of distribution?

A. I believe such a plant, even if it were constructed today under any conditions, operating as they are, with the variations in temperature, with the slow meters and the leaks, broken mains and services that may account for it, that 11 per cent would be a fair and reasonable unaccounted for of gas.

585 Q. Then I will ask you this: As time goes on does a gas plant tend to lose more and more unaccounted for gas?

A. Not if they maintain their system. It will vary from time to time and from year to year.

Q. Does it tend to that? I did not ask you whether they maintained their system. Does it tend?

The Master: I think that is a proper answer. I understand the witness' answer to be that it will not increase if they maintain their system.

The Witness: That is right.

By the Master:

Q. It will if they do not?

A. That is right, if they do not maintain their services and meters.

Q. And their holders?

A. And the holders. There is no reason why they should have more.

Q. If they do not repair their holders they will have more?

A. That is right.

Mr. Hyatt: There is just one more question, your Honor, that occurred to me.

By Mr. Hyatt:

Q. Did you ever operate a photometer, Mr. Woods?

A. I have.

Q. Could you tell the difference upon looking at it, whether gas was 18 candlepower or 24 candlepower?

A. Looking at the gas?

Q. Just looking at the gas?

A. I could not.

Mr. Hyatt: That is all.

The Master: Anything else?

586 Redirect examination.

By Mr. Ransom:

Q. Mr. Woods, if some portion of the mains, the distribution mains of the company, are exposed to the air in connection with

grade crossing construction being carried on by public authorities, would such exposure to the air at certain times of the year tend to increase or decrease the quantity of gas unaccounted for?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. The most that can be said of that is that it is a temporary situation, not a permanent one.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Cummings: He is assuming that such a thing was done here too, your Honor.

The Master: Objection overruled.

A. That would affect it.

The Master: While that temporary condition exists?

The Witness: That is so.

Q. If that situation remained permanent at a grade crossing on part of the system then the increase would be permanent?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial.

Mr. Hyatt: I object to the form of the question as leading.

The Master: Overruled.

Mr. Hyatt: Exception.

A. It would.

Q. If mains were exposed to the air during the necessity of being run above the surface in crossing meadows or marshes, would 587 that at certain times of the year tend to increase or decrease the quantity of gas unaccounted for?

Mr. Neumann: Same objection as last urged by me.

The Master: Overruled.

Mr. Neumann: Exception.

A. That is so.

Mr. Cummings: Have you put on the record here that there are any marshes?

The Master: Whatever the reason may be for the exposure of the mains at any time of the year, it will affect the unaccounted for?

The Witness: Yes, it will have a greater condensation.

Q. And if mains were laid through water which was subject to varying temperatures at various times of the year, would that tend to increase or decrease the quantity of gas unaccounted for?

A. That would apply the same—

Mr. Neumann: The same objection as last urged.

The Master: Overruled.

Mr. Neumann: Exception.

A. (continued.) would apply the same as an exposed main. Whatever the temperature is the main is subject to, the gas will come to that same temperature.

Mr. Cummings: We might assume that they are all in water.

The Master: This is the time for Mr. Woods to bring out this situation, if such a condition exists.

588 Recross-examination.

By Mr. Hyatt:

Q. You would not call it a model plant, would you, Mr. Woods, if a good portion of the mains was above the ground?

A. There may be conditions where you must do that, you would have to do that.

Q. I did not ask you that. I ask you if you would call it a model plant?

The Master: I imagine what he really means is this: Would you say it was an ideal operating condition so far as distribution is concerned if you had some of the mains above ground or in water?

The Witness: I would say it was not ideal, your Honor, but those are the conditions that you meet.

Q. If you were an engineer, constructing a gas plant for a gas company, would you obviate that as much as possible?

A. As much as possible, but in all probability it could not be obviated.

Q. But it could be obviated some, could it, though not substantially?

The Master: Well, you are just guessing.

Mr. Hyatt: No, I am not just guessing.

The Master: You are asking if it could be, you would; if it could not be you would not. Next question.

Mr. Chambers: I want to ask a couple of questions.

Q. Do you know whether or not the men engaged in the manufacturing department of this complainant are hired by the month, by the week, or by the day?

A. I suspect that some are employed by the week and most of them by the day.

589 Q. Most of them by the day?

A. Yes.

Q. Any hired by the month?

A. Yes.

Q. What kind of labor is hired by the month?

A. The superintendent would be by the month.

Q. What kind of labor is hired by the day?

A. Common labor.

Q. Is it because you hire men by the day that you have to pay for overtime and Sundays?

A. It is not.

Mr. Hyatt: That is all.

The Master: Now Mr. Chambers:

Recross-examination.

By Mr. Chambers:

Q. Mr. Woods, you do not know any mains of this company that are laid in water, do you?

A. Yes.

Q. Where?

A. The line that extends--as I recall, the name of the street is Linden Avenue, and it extends across the meadows from Flushing into College Point. That pipe is laid on piles in the marsh land, running across; a 12 inch line, as I recall, over the meadows into College Point and the Whitestone section.

Q. And the pipes are right in the water?

A. It is a tidewater there; it is laid on piles and it is filled in, but the water surrounds the pipe all the while.

Q. Do you think that is good construction?

A. It is a means of getting there, the only means of getting to that section.

Q. No, but that is good engineering to lay the pipes in the water?

590 Q. Mr. Ransom: Objected to. If it is the only way, then it is good engineering.

The Master: I suppose you could build a tunnel, could you not?

The Witness: If we could have done anything else we would have done it. We had to put those piles in to support it.

Q. Your condensation would not occur in the summer time at all, would it, when the pipes are exposed?

A. It would depend upon the temperature.

Q. It would not occur in the warm months, would it?

A. No, not to any great extent, except as I explained to the Master, it would depend upon the temperature of the gas in the holder, and while that would not, the condensation that would be taking place at that time would not affect the unaccounted for, because that had been taken care of in the correction for the meter readings.

By the Master:

Q. What is that, tidewater comes in from the Sound there?

A. Yes.

Q. You have seen temperature of water in July and August below 60, have you not?

A. Yes, I think in the summer the water will get up to 64 or 65, your Honor.

Q. But you have seen it below 60, have you not?

A. Oh, the greater part of the year.

Q. I suppose this is pretty shallow water and it heats up pretty quick when the sun gets on it?

A. Yes, it is that marsh land.

Q. But during the night you will probably find the water below 60, will you not?

591 A. Yes, because there is an ebb and flow of tide through there.

Mr. Chambers: That is all.

Recross-examination.

By Mr. Neumann:

Q. Mr. Woods, you visit all the plants of the New York & Queens and the Consolidated all the time, do you?

A. I do.

Q. Will you please state for the record at how many plants of the Consolidated system or its subsidiaries the superintendent lives on the ground of the plant?

Q. We have no superintendent of the subsidiaries living right at the plant. I wish to say, though, that if we had the facilities we would be glad to have them there.

Mr. Neumann: I move to strike out the last part of the witness' answer as not responsive.

The Master: I am going to let it stand because it would have responded to a question I should have asked.

Mr. Hyatt: "We would be glad to have them there," I don't know what that proves.

The Master: The fact has already been developed on this record that it is a really useful thing to an operating plant to have the superintendent on the ground, so that he can be in very close touch with it and not miles away when something happens.

Mr. Neumann: And I am attempting to prove that that is not a rule in other plants, or a custom.

592 The Master: I don't care whether it is or not.

All right, Mr. Woods, leave the stand.

Mr. Hyatt: Thank you very much.

HERBERT W. ALRICH, recalled for further direct examination.

Direct examination.

By Mr. Ransom:

Q. Mr. Alrich, referring to Plaintiff's Exhibit 47 for Identification, concerning which you were being interrogated when you were last on the stand, relating to land owned and used by the complainant company as of December 31, 1919, have you since gone to the Flushing plant and personally checked and verified the dimensions shown by you on Exhibit 47 for Identification?

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way to prove the fact he is endeavoring to develop in this case.

The Master: Overruled.

The Witness: I have.

The Master: How did you do it?

Mr. Neumann: Objected to.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: I picked up Haviland's Survey.

The Master: You what?

The Witness: Picked it up—that is a technical expression, picking up a survey.

The Master: It is a new one on me—now tell us something about it?

593 The Witness: Do you want me to state my complete process?

The Master: Yes.

The Witness: I went to the Topographical Bureau of the Borough of Queens and got the monumenting for that section, which is Section 55, then I got Haviland and his field notes—

Q. Who is Mr. Haviland?

A. George W. Haviland is the surveyor who made a survey for us in 1919, of the property.

Q. Is he a City surveyor?

A. He is; he has been operating in Flushing for about a hundred years—and with his original survey and his field notes and the instruments, we began at the City's monuments.

Q. Who do you mean by "we?"

A. I mean Mr. Haviland, John Doherty, his assistant and myself.

Q. They went with you?

A. They did. We took and picked up his survey.

The Master: By that you mean you followed his lines?

The Witness: Yes.

The Master: Went back over his monuments and measurements?

The Witness: Yes.

The Master: And his stakes?

The Witness: Yes.

The Master: Did you actually remeasure the distance from monument to monument?

The Witness: We did, took all the off-sets—

Q. And you found these dimensions to be correct?

594 A. Substantially correct.

The Master: What do you mean by substantially correct?

The Witness: Why, the dimension on Myrtle Avenue is given there as 334.09 feet. I would not pretend that we got that as .09 of a foot; I should say we got it to an inch, 334 feet and 1 inch, and .09 is the result of trigonometrical calculation.

Of course no man will pretend, when he is measuring on the ground with a hundred foot tape, that he can measure to the thousandth of a foot.

The Master: You offer that in evidence?

Mr. Ransom: I offer in evidence Plaintiff's Exhibit 47 for Identification.

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Why is it immaterial?

Mr. Neumann: And not properly proven.

The Master: Why is it immaterial?

Mr. Neumann: Will the Court permit me to put all my objections on record?

The Master: Go ahead.

Mr. Neumann: Not properly proven. According to the witness' own statement, it is incorrect; according to the witness' own statement, it is not based on what he did personally, but what two other people did; according to the witness' own statement, it is incorrect; the measurements are not correct; he admits himself that there is some chance of there having been corrections in the measurements.

The Master: Anything else?

595 Mr. Neumann: And in addition to that, the witness, whose name I have now forgotten—I think it is Halleran—testified that there was a street running through this property, and the map here indicates that this witness has attempted bodily to take that street and put it in as part of this plant.

Mr. Cummings: I have an objection, that is not based on the deeds, and that is what you should have made surveys on.

The Witness: You are asking me a question of law and I am telling you what I did.

The Master: Anything else?

Mr. Cummings: I make that objection, that it is based on another man's survey.

Mr. Ransom: The Master wouldn't take it if it were based merely on the deeds.

The Master: Anything else? Objection overruled. Mark it in evidence.

Mr. Neumann: Exception.

Complainant's Exhibit 47 for Identification was received in evidence.

Q. Mr. Aldrich, at the request of the Master when you were last on the stand, have you prepared a diagram, corrected to date, showing the plant and structures, or showing it as of December 31, 1919?

A. I have.

The Master: The location of the various plants and structures?

Mr. Ransom: Yes.

Q. Will you produce that diagram?

A. I produce such a map that bears the marking, New York & Queens Gas Company, Flushing Works, No. 8065.

596 The Master: Is that drawn to scale?

The Witness: It is.

Q. And this is one of the file maps in the company's records?

A. It is.

Q. On the left-hand side of the diagram I notice two zigzag lines which indicate a tear in the tracing; is that correct?

A. That is correct.

Q. That is not meant to show any structures or conditions and does not in fact extend substantially into the plant?

A. It does not. The tracing is drawn—

The Master: The blueprint shows this repair in the tracing?

The Witness: It does.

The Master: That was evidently the sewing which has shown up on the blueprint.

The Witness: It was.

Mr. Neumann: Why not have the stenographer put a mark there, so it can be indicated on the record which lines are referred to?

The Master: It is fully explained. It is quite apparent that the sewing shows up on the blueprint.

Q. Otherwise the diagram is correct as of that date?

A. It is.

The Master: To your own knowledge?

The Witness: It is.

Q. And at the present time?

A. It is.

Q. So far as the plant and the holders and the gas tank areas are concerned?

A. Yes.

597 Mr. Neumann: Objected to as incompetent, irrelevant and immaterial and not properly proven, not shown to be authentic, no foundation laid for it. It is apparently taken from the records of the company and introduced here without any statement as to who prepared it, or anything else.

The Master: I don't care who prepared it, the witness says it is right. Objection overruled.

Mr. Tobin: I would like to raise the further objection that this witness has not indicated in any way that he knows the location of these buildings on the plan; further than that, he is not an officer of this company.

The Master: Objection overruled, mark the paper.

Marked Complainant's Exhibit 79.

The Master: Is there anything else of Mr. Aldrich?

Mr. Ransom: That is all.

The Master: Cross-examine Mr. Aldrich.

Cross-examination.

By Mr. Chamber:

Q. Mr. Aldrich, are you paid any salary by this company?

A. The New York & Queens Company?

Q. Yes.

A. I am not.

Q. You don't get anything from them?

A. No, only such expense as I charge against them in connection with any work I may do—that is, disbursements of my own.

Q. You spoke a moment ago of the company as "our" or "we"—as your company; what did you mean by that?

598 A. That is just a bad habit that I have that you may have noticed before in the Consolidated case.

Q. You kind of feel that you are a part of the New York & Queens Company?

A. Naturally, after nineteen years' employment by the allied interests.

Q. And how much time do you devote to this company?

A. Well, I can't answer that very definitely. This is one of the affiliated companies that I have to cover in my tours and have since the Consolidated acquired it.

Q. While you are testifying here who is paying for your time, the New York & Queens or the Consolidated?

A. The Consolidated Gas Company is paying my salary.

Q. You are loaned out?

A. Why I don't know that I would characterize it that way, it is among the things that fall within my line of duty.

Q. When you testified in the Consolidated Gas Company case, you didn't say you devoted any time to this company?

A. I most assuredly did in answer to Major Clark—read the record—I think I know it better than you do.

Q. It now appears that you devoted quite a lot of time?

Mr. Ransom: Objected to.

The Master: Wait a minute. This witness has testified as to location of certain land, buildings, etc., occupied by this complainant company. Cross-examine him as to the accuracy of those statements.

599 Mr. Chambers: Well, I want to find out how interested he is.

The Master: He is very much interested; he has already stated that he is employed by the Consolidated Gas Company, which company owns all the stock of the New York & Queens Company, and he feels that this is part of his employment and he is paid by his employer. Now if you want to show that he has been convicted and has been to jail, go ahead, if you think that will have any bearing.

Q. How long have you been acquainted with the structures on the complainant's land?

A. Well, I first visited the plant in about 1914. The Consolidated acquired the stock in 1913, and I first visited the plant about 1914, as near as I can remember, and then went all over the works and sized it up.

The Master: Now, Mr. Aldrich, I am going to ask you to answer questions, yes or no, or give dates as near as you can and not make

speeches. Let us shorten this thing. You were asked when you first saw it, and you could have said 1914 or thereabouts.

The Witness: I think he asked me how long I had been familiar with it.

The Master: Since 1914 would have been an answer. Don't let's have these speeches spread out.

Q. Are there any structures that you testified to that were not upon the land of this company that you mentioned?

Mr. Ransom: Objected to as vague.

600 The Master: Mr. Aldrich described a number of manu-facing structures, and Mr. Chambers wants to know if there are any that were not on the land?

The Witness: No, they were not all there that are there now, and some that were there then are not there now.

Q. Tell me some that were there then and that are not there now, first?

Mr. Ransom: Objected to as immaterial and not within the scope of the cross-examination.

The Master: What is the purpose of the question?

Mr. Chambers: I want to find out what they built since he became acquainted with it, and what they retired of these buildings.

The Master: I overrule the objection.

Mr. Ransom: Exception.

A. The one million cubic foot holder on Farrington Street had not been constructed, and on that site were two frame dwelling houses. The governor house was not built adjacent to the holder, the gasoline tank on Farrington Street just south of the governor house was not there; the Babcock & Wilcox boilers had not been installed, and at that time we raised the building; that is, we made the boiler house higher—there have been some changes in the works connections. The two turbine driven blowers in the generator house have been installed; the brick stack was built; the 150,000 gallon oil tank has been built, together with the enclosing basin of the oil tanks; the frame buildings just east of the oil tank for the storage of gas ranges has been built since that time. Those are the things that I immediately recall without any memorandum before me.

Q. What pieces of plant have been retired, that you have described?

601 Mr. Ransom: Objected to as immaterial and not within the present scope of the cross examination.

The Master: Overruled.

The Witness: I recall a steam engine that was used on the blowers.

Mr. Hyatt: Do I understand the question to refer to these things that appear on the maps?

The Master: No, Mr. Chambers was asking what property was retired.

Q. Why was that retired, was it worn out?

Mr. Ransom: Objected to as not within the scope of the cross examination.

The Master: Overruled.

The Witness: I don't recall the particular circumstances of the removal of that engine.

Q. All right, go to the next one?

A. We made a withdrawal, on the books, of the metal work of the gas holder right at the corner of Byrd's Alley, Byrd's Alley and Myrtle Avenue, retaining the tank as a tar tank.

Q. Anything else?

A. Those are the items that I immediately recall to mind without a memorandum.

Q. Had that been a holder before that?

A. It had been a gas holder.

Q. And was it worn out, wasn't it fit for a holder any more?

A. No, it was more desirable as a tar tank than as a gas holder.

The Master: You were building a new gas holder?

The Witness: We had built the new gas holder.

602 Q. They had put in a new gas holder?

A. A larger one along Farrington Street.

Q. The biggest one on this map?

A. Yes, it shows 123 feet in diameter.

Q. And you got how many more?

A. Two more.

Q. This one marked "holder" up here in the corner (indicating) is not a holder any more, is it?

A. Used as a tank.

Q. That is what I wanted to designate?

A. It holds tar.

Q. Well, it isn't a gas holder?

A. A tar holder.

Q. Is this relief holder a holder to hold gas?

A. That holds gas.

Q. It is used now?

A. It is.

Q. And has been?

A. It has.

Q. Is it pitted at all?

A. It is not; it is in excellent condition.

Q. You do not know how old it is?

A. I do not, but, having been used as a relief holder, it would be always thoroughly coated with tar and therefore preserved—you might say embalmed in tar.

Q. I didn't ask you that.

A. I am trying to answer your question.

Q. Well, I didn't ask you anything about that: the last question I asked you was whether you knew how old it was, and you made this speech?

A. You asked me if it was pitted.

Q. Before that, and you said no.

A. That was the second question.

603 The Master: The record shows what he said.

Q. Now the storage holder, how old is that, do you know?

A. I don't know.

Q. Is that pitted?

A. It is not, and I have examined it recently.

Q. Is it used as a storage holder or relief holder, or what?

A. It is now used as a relief holder. These holders are so connected that they may either be used as a relief holder or—

Q. Mr. Aldrich, you said it was used as a storage holder, and then you said a relief holder; there isn't any need of saying anything beyond that. So that that name "storage holder" is not correct?

A. Yes, it is correct.

Q. Well, it is a relief holder?

A. They might switch tomorrow.

Q. I didn't ask you that. It is used now as a relief holder?

A. It is used as a relief holder.

Q. Why didn't you put relief holder there?

A. I would have to put both words to suit all conditions.

Q. So you have two relief holders now?

A. We have two holders, either of which may be used as a relief holder or alternatively as a storage holder.

Q. Now, they are relief holders for—

The Master: We have heard that; next question.

Mr. Chambers: Exception.

604 Q. This big tank here, what is that used for, storage?

A. Storage.

Q. What is it made of, do you remember?

A. Steel.

Q. And these other two holders, these relief holders, what are they made of, what kind of material?

A. Why, presumably, steel.

Q. You are not sure about that, I take it?

A. No.

Q. And this little tar holder, that must have been an old-fashioned holder, was it?

A. Why, no; holders are built today with masonry tanks.

Q. This other circle here, what is that?

A. That is a tar pit.

Q. That is not a holder?

A. No, it is a tar pit, it is a separator, it is a hole in the ground lined with masonry.

Q. Where is this house that the superintendent lives in?

A. Right here on Farrington Street (indicating).

Q. Marked "dwelling"?

A. Yes, marked "dwelling," and it is about 96 feet north of Myrtle Avenue.

Q. You don't know how old that is?

A. I don't think it is very old, it looks in pretty good shape.

Q. Then you don't agree with Mr. O'Connor, who said about twenty or twenty-five years?

A. It doesn't look so.

Q. And you haven't any idea how old it is except by looks?

A. No.

Q. Who made up this exhibit—whose handiwork is it?

A. Why, it is composite; the original drawing was made by a man named Leven.

605 Q. You didn't measure it up to see if it was accurate, did you?

A. I made several corrections on the plan from my examination of the works.

Q. Where, what corrections?

A. For instance, right here (indicating); this drawing, as originally made, showed this wall as a continuation of this east wall of the generator house.

Q. You are speaking of this generator house?

A. I am speaking of this exhauster room here (indicating). The drawing as originally made showed this wall as an extension of that one. I personally ascertained in the field, that it is set one foot back and had the drawing changed to correspond.

Q. It was not right in that particular?

A. It was not right as previously made.

Q. Where else did you alter it or change it?

A. I had this gasoline storage added on; I had this underground tank; I had that hose house; I had this tar tank; I had changes made in these connections; I had the interior of this office building changed to show the partitions as they now are.

Mr. Cummings: Were they put in approximately or——

The Master: I won't permit this; Mr. Chambers is cross examining—one at a time.

The Witness: I had the three buildings in the upper plot added on. That is all that immediately occurs to me without a memorandum.

Q. On this map you have a street in there between the stove shed and the oil tank?

A. I don't see one.

606 Q. What is that strip over here (indicating); there are no buildings on that, are there?

A. No buildings, no.

Q. Where does that Center Street come in here?

A. I don't know of any Center Street.

Q. You didn't look at that other map, did you?

A. Which map?

Q. The map that Halleran had.

Mr. Cummings: The one you just checked, Mr. Aldrich. In making your survey you must have run across the street.

Mr. Neumann: There is a street shown on the city maps.

The Witness: We haven't any record of one ever having been laid out, although some maps do show one. The Tax Map, for instance, shows this cross there (indicating), the City's own Tax Map.

Mr. Ransom: Referring to the pink-tinted portion between Block 171 and Block 170.

The Witness: Correct.

Q. But on any map that you had, you did not see a street through there?

The Master: Tell me, this Block 170 runs to what line, where is the dividing line between Block 170 and Lot 40, or Block 171?

The Witness: Well, Block 170, your Honor, includes property to the west of this, and I think also to the south.

The Master: I am talking about the northerly line between Blocks 170 and 171.

The Witness: I should describe it as the northerly line of Block 170, Lot 31, being a line of 298.32 feet north of Myrtle Avenue and parallel thereto.

The Master: What I am trying to find out is, into what 607 block, the space that would seem to be a continuation of some proposed street is, whether in Block 171 or Block 170?

The Witness: It was not clear on the Tax Map, what disposition they intended to make of this strip which connects Lot 31 with Lot 40; it was not clear what disposition they intended to make of it.

Q. So you just dabbed it with pink?

A. We have deeds covering it, and the Tax Map indicates, drawing the lines on there, that they recognized—

Q. Don't the deed cover some other streets, too; for instance, don't your deeds run out on Myrtle Avenue?

A. I don't recall that they do; in any event Myrtle Avenue has been open for a hundred or two hundred years.

The Master: Let us go to something else.

Q. Are there any buildings between the strip Lot 40 and 41?

A. Nothing but fences.

Q. Have you described all of the pieces of property that have been retired since you have been connected with the property?

The Master: That question will not be allowed. The witness said as far as he can recall without any written memorandum.

Mr. Chambers: Exception.

Q. Where are the three gas machines here that you described, in what building?

A. They are in two different buildings. The larger machine which Mr. Hyatt chose to label "A" is in the southerly generator house, and the other two machines, the seven foot six machines, are

in the northerly generator house which stands at right angles with the first one.

608 Q. Was that large machine put in since you have been going over there?

A. No, that was put in in 1911.

Q. What make is it?

A. It is a Lowe.

Q. And the other two?

A. Those are also Lowe type of apparatus.

Q. Do you know how old those other two are, the seven foot six machines?

A. I do not.

Q. Do you know how old the stable is, do you know anything about it?

A. I do not—it doesn't look like an old building.

The Master: Your answer is you don't know?

The Witness: I don't know.

Q. And the oil house?

A. The oil house, I do not know.

Q. What is the storage capacity of the oil house?

A. How many barrels it will contain?

Q. Yes.

A. It is not a building for storing of oil in bulk, but for the enclosure of the barrels. I don't know, it would doubtless hold eight barrels—not piled on top of one another, just standing on end.

Q. And the coal bins, are they covered or not?

A. They are in part covered and part open.

The Master: That is an answer.

Q. And the tar tank, how old is that—since you were there, did you say?

A. Yes, that tar tank has been put in within a couple of years.

Q. And the hose house?

A. Put in within two years.

Q. The governor house?

The Master: He said since 1914.

609 The Witness: Well, Mr. Chambers means the pump station on Myrtle Avenue. I judge—I don't know how old that is.

The Master: You said the governor house had been built—

The Witness: The governor house had been built on Farrihgtown Street.

The Master: Since 1914?

The Witness: Yes.

Q. And these buildings over here, the stove shed (indicating). What is that for?

A. Storing ranges pending their repair—ranges that have been brought in.

Q. How old is that stove shed?

A. Built within a couple of years.

Q. And the paint shop?

A. Likewise within a couple of years.

Q. What is that paint shop for?

A. For the works painter to store paints, oils and materials.

Q. And these oil tanks over here (indicating) what are those for?

A. Storing the gas oil.

Q. Then you have a place to store oil here (indicating) this oil house (indicating) where you store the barrels?

A. That is lubricating oil.

Q. And the other is your oil for making gas?

A. Yes. There is a further storage here, the gasoline storage on Farrington Street.

Q. How much of a storage have you got for oil?

A. 180,000 gallons of gas oil.

Q. Both tanks?

A. Both tanks.

Q. How long have those tanks been there?

A. I don't remember when the smaller one was built; the larger one was built since 1914.

610 The Master: A good part of this plant has been built since 1914, hasn't it?

The Witness: Well, we have done quite some extensive work.

Q. It must have been in kind of poor condition, wasn't it, when you first became connected with it?

A. I shouldn't so characterize it.

Q. Well, you made quite extensive improvements?

The Master: Oh, we have had that, I brought that out myself.

Mr. Chambers: I merely wanted to emphasize it.

The Master: You don't have to emphasize it.

Q. Everything that is over there is on this map, now, by way of structures, or have you got some that are not on there?

A. It would be rather small incidental apparatus that was not shown on this map; it would be some auxiliary, rather too small to show. For instance, even this overflow tank in the boiler room is shown.

There has been an effort made even to show the oil heater in this pump room, you see.

Q. Were you here when Mr. O'Connor testified?

A. I was not.

Q. You spoke of the dwelling house and the office building; where is the dwelling house and the office building?

A. On Myrtle Avenue just about midway between Farrington Street and Byrd's Alley.

Q. And you don't know how old that is?

A. I do not know.

Q. And this dwelling is a wooden structure?

A. It is.

611 Q. One and a half stories?

A. Two stories.

Q. And the office building is what, brick?

A. Is brick, with a frame extension, as I already testified, on the easterly side.

Q. What is the material that the generator house is made of?

A. Brick.

Q. How many stories?

A. Two—most all the buildings are brick.

Q. What do you mean, where else are there any brick buildings?

A. I don't understand your question.

Q. What other buildings do you have in mind?

A. That are brick?

Q. Yes.

A. The compressor house is brick; the office is brick, as I have already testified—

Q. And the generator house?

A. And valve house adjacent to the two smaller holders, are brick.

Q. You wouldn't call those buildings?

A. I should—you could live in one of them.

Q. Well, they are very small?

A. That is a relative expression. They may look small on this map when near by a holder of one hundred and twenty-three feet in diameter and another one seventy-six feet in diameter is shown, but they are buildings none the less. One would have to have a permit from the Building Department to build them.

Mr. Ransom: Have you finished your answer as to brick buildings?

The Witness: No.

Mr. Ransom: Let him finish.

The Witness: The pump house to the west of the two generator houses is brick; the two generator houses, as I previously stated; the engine room, the main part of the boiler house, the room containing the meters, tar extractors, exhauster and washer, is brick; the house for the storage of lubricating oil is brick; the governor house on Farrington Street is brick.

Q. Now, this governor house that regulates this small relief holder—

A. The valve house.

Q. The valve house, how big is that?

A. Why, I judge it is about—I have no memorandum before me—I should say it is about 10 by 10 feet.

Q. And the other one?

A. Is rather larger, it is about 10 feet wide and I think about 12 to 15 feet long.

Q. And the oil house is about that same size?

A. Oh, no, the oil house is rather larger.

Q. It looks about the same size?

A. I know, but it is rather a larger building.

Q. Well, you say this is drawn to scale?

A. It is.

Q. If it is right it ought to show?

A. I should say it was about 10 feet wide and fully 15 feet long.

Q. Now the foundations to these brick structures, do you know anything about them?

A. In a general way.

Q. What do you mean by in a general way, you have never examined them?

A. Oh, yes, I have made some examinations.

Q. Which foundations have you examined, or which buildings?

A. The generator house—both generator houses; the boiler house and of course the governor house on Farrington Street I have had to do with the building of that and saw it put in.

Q. What are the foundations of this large generator house?
613 A. Brick and concrete as I recall.

Q. And the foundations of this boiler house?

A. You mean governor house?

Q. Governor house?

A. On Farrington Street—is concrete.

Q. And what kind of a roof is on the generator house, the large generator?

A. Corrugated iron.

Q. And on this—what do you call this?

A. The governor house.

Q. On Farrington Street?

A. Gravel as I recall.

Q. Do you know anything about the machinery that is in these buildings, the age of it, any further than you have stated?

A. I do not.

Q. That is, you have stated fully now your knowledge about the contents of the buildings?

A. I have.

Q. And the age of the buildings?

A. I have.

The Master: Anything else? Anything, Mr. Neumann?

Mr. Neumann: Yes, if the Court please.

The Master: Go ahead.

Cross-examination.

By Mr. Neumann:

Q. Directing your attention to Exhibit 47, Mr. Alrich, will you state just what you did in connection with the measurements of that property covered by the exhibit?

The Master: The question is not allowed, it has been fully covered and fully answered.

Mr. Neumann: I think, if the Court please, what the witness said was, he used the expression "we" all the time; he said that we three men went over, himself and two others.

614 The Master: I won't take any more on that.

Mr. Neumann: I want to have the record show just what he did.

The Master: Well, I won't take any more.

Mr. Neumann: Exception.

Q. Mr. Alrich, you are not a surveyor, are you?

A. I practiced that branch of surveying, which is an adjunct to my business, and I am a surveyor in my line; surveying is a highly specialized profession.

Q. Now I direct your attention to this question on page 50 of the mimeograph record:

"Q. You didn't go on the ground and make a survey yourself, did you?"

A. I did not testify as a surveyor, I testified to it as a map."

Do you remember that question and answer?

A. I remember the question and I remember the answer so well that I know the stenographer made the error. I have already called the attention of our counsel to it. I said I did not testify to it as a survey—we have a correction prepared on that.

Q. Well, what experience did you have as a surveyor?

A. I have done considerable surveying in connection with our construction work.

Mr. Neumann: I move to strike that out; that doesn't mean anything.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. State definitely what properties you have surveyed, and the time that that covers?

A. Well, I would have to think up a pretty long list. Some of those that immediately occur to me are in connection with the 615 condemnation proceedings, those for the extension of the Willard-Parker Hospital, the Chelsea Improvement; the North River Dock Improvement at 46th Street, where the line of the taking was laid out by surveyors of the Dock Department and, as the fixing and location of those lines is open to discussion as will be shown by the facts, in the case of the Chelsea Improvement, we required the Dock Department to ship their lines 7 inches to the west; when those lines were laid out by the Dock Department they were gone over by ourselves. I worked on the work of verifying those lines in those three cases. In the last case I mentioned, in the 46th Street condemnation proceeding, there were four different surveyors that had blazed the line of the taking, and none of the four entirely agreed. There was the Dock Department; there were the surveyors of the Borough President's office—Borough President of Manhattan—and two City surveyors, and they all got different results. I went over that myself to make a report to the company, which represented the facts for which we would contend.

The Master: I am going to interrupt you at this point. If this case involved the actual location of a line dividing the property so that the expertness of the work would be a very material fact and worthy of serious consideration in the conclusion to be reached, I

should perhaps hesitate to accept Mr. Alrich as a surveyor in that sense, but this case does not involve any such question; it doesn't make any difference whether the property line is an inch either side of the line shown or whether it is an inch more or less than the measurement given, and I shall decline to permit further cross examination along this line.

616 Mr. Neumann: May I just say this to the Master, that this witness has attempted here to grab off apparently a street, and it can only be on the basis that he is a surveyor and knows something of it.

The Master: No, I am telling you now what my attitude is. You can ask another question if you want to make a record.

Q. You didn't testify in those three cases in court or before any board, did you?

The Master: One moment. If Judge Ransom will object to the question I will sustain the objection.

Mr. Ransom: I shall object to it.

Mr. Neumann: Exception. My questions would all be along the same lines so there is no need of my presenting them any further.

Mr. Ransom: I will let him answer that question.

Mr. Neumann: It is too late.

The Master: I won't. I don't think it is material to this issue.

Q. Mr. Alrich, were you present while Mr. Woods testified this morning?

A. I was.

Q. Did you understand Mr. Woods to say that this New York & Queens Company plant did not use any blower in connection with its high pressure system?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception. What difference does it make what Mr. Woods said?

The Witness: I should say that the record shows what he said and I would rather read the record; my recollection might be wrong.

Q. I am just trying to find out whether you recall what he said?

617 A. I recall in a general way that he recited the facts as known to myself.

Q. Do you recall the fact as to whether he stated that there were or were not any blowers in this plant in connection with the high pressure system?

Mr. Ransom: Objected to.

The Witness: He tried to explain——

Q. Yes or no, Mr. Alrich?

A. I recall in a general way his statement regarding it.

Q. Do you recall whether he stated there were or were not blowers or a blower in connection with the high pressure system?

Mr. Ransom: Objected to.

The Witness: I do.

The Master: What is your recollection?

Q. What is your recollection?

A. He stated they used compressors or pumps; he used the alternative expression pumps, piston pumps.

The Master: That is his recollection, now what is the point?

Q. Now, I call your attention to page 58 of the mimeograph record in which you stated as follows:

"An enclosure within the boiler house contains two No. 6 Special Sturtevant Blowers driven by Terry Steam Turbines."

Is that correct?

A. That mimeograph record is incorrect; that word is generator house.

Q. Outside of that, though, the answer is correct?

A. My statement is correct. There are two Sturtevant No. 6 blowers driven by Terry steam turbines for blowing on the generators.

618 Q. On page 59 of the mimeograph record, Mr. Alrich, you testified as follows:

"On the east side of Byrd's Alley is a gas holder in steel tank having a capacity of 250,000 cubic feet, which is the relief holder used in connection with this work, and to the south of it, and also on Byrd's Alley is a holder having a capacity of 100,000 cubic feet which is the holder from which the gas is drawn and sent by the compressors to Douglaston."

Do you recall that answer?

A. I do.

Q. And is that the only holder from which gas is sent to Douglaston, within your knowledge?

A. It is the only holder from which gas is taken immediately and sent to Douglaston.

Q. What do you mean by immediately?

A. It might be possible to—

Mr. Neumann: No, I move to strike that out.

Mr. Ransom: Let him finish.

The Master: He is explaining what he means,—I think I know what he means.

The Witness: It may be possible to first send the gas from the large holder into the small one and then send it to Douglaston. Indirectly, then, the gas sent to Douglaston would have been taken from the large holder, but as a reservoir from which—

Q. What is the fact?

The Master: As I understand it, before it starts out to Douglaston, it comes through this little holder.

Q. In other words, in order to reach the pumps you have got to get it into this small holder?

619 A. Or, if they could use the 250,000 cubic foot holder—they could by switching the valves.

Q. Do you know what the practice is over there irrespective of what they could do?

A. The present practice is to draw from the 100,000 cubic foot holder, as I testified.

Q. And that is based on your own knowledge?

A. It is.

Q. Now you stated in answer to the question of the Master on page 59, the Master's question being as follows:

"What is the capacity of this plant", and your answer, "About 2,000,000 feet per day"; do you recall that question and answer?

A. I do.

Q. Where did you get that information from, Mr. Alrich?

A. I can't state any particular source.

Q. Did you get it out of the air?

A. No; I always get my information from a safer source than that, and more reliable.

Q. Where did you get it from in this instance?

A. I couldn't tell you where I got that any more than I could tell you how I learned the English language. I acquired these facts by my contact with the company's affairs.

Q. By a process of absorption?

A. No, learning.

Q. Were you here the day Mr. Spear testified?

A. I was not present at the time he testified; I left the room.

The Master: I will have to suspend now as I am expecting a very important long distance call.

We will adjourn until Tuesday at 9:30 and run all day if necessary in order to finish this up.

620 Mr. Neumann: The situation with reference to Tuesday, if the Court please, is this: If I will be compelled to go on the cross examination of witnesses whose testimony will have to be tested by the books, I will be in this position, that I may have to ask for further indulgence by reason of the fact that Mr. Frank, who worked on these books, has resigned yesterday. Now, it is embarrassing to me, and I want to put myself frankly upon the mercy of the Court in that respect; it is something over which I have no control. I think the Court must feel that I am inclined to do everything I can not to retard the case.

Mr. Ransom: Well, we could go ahead with Colonel Miller.

Mr. Neumann: Well, we would have to check the inventory.

Mr. Ransom: Evidently the cross examination will take up a part of Tuesday.

Mr. Neumann: I will be glad to do this; I will be glad to go ahead as much as I can until I get to a point where I cannot go any further, and then say to the Court that I want more time—I will be glad to do that.

The Master: How many other witnesses will you have for direct?

Mr. Ransom: Two, possibly three.

The Master: We will adjourn until Tuesday morning.

Mr. Ransom: But they will be short.

The Master: I will dispose of it on Tuesday.

Adjourned to Tuesday, May 18, 1920, at 9:30 A. M.

Last Complainant's Exhibit—79.

621

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

Met pursuant to adjournment.

New York, May 18, 1920.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann and Mr. Deegan, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Hyatt, of Counsel for Defendant Dennis O'Leary.

HERBERT W. ALRICH resumed.

Cross-examination continued.

By Mr. Neumann:

Q. Mr. Alrich, I show you Complainant's Exhibit 79, and I direct your attention to the lower right hand corner?

A. I see it.

Q. Can you read the marks and figures that are there?

A. I can.

Q. Am I correct in stating that this drawing was revised on 9/1/14?

A. You are.

Q. By R. W. S.?

A. Ralph W. Scott, yes, sir.

622 Q. Were you there at that time?

A. I was.

Q. The next one is when?

A. 2/17/16, McParland.

Q. And the next one?

A. 4/25/16, J. J. S., meaning John J. Stevens.

Q. And the next one?

A. 11/15/18, by McParland again.

Q. And the next one?

A. 11/19/18, by McParland again.

Q. And the next one?

A. 9/16/19, by Horace W. De Ved.

Q. And the next one?

A. 12/2/19, by McParland.

Q. And the next one?

A. 12/3/19, by H. W. De Ved.

Q. The next one?

A. May 10, 1920, by Mrs. Marian B. Ray.

Q. Can you tell Mr. Alrich the various markings that were put on this drawing by those various revisions?

Mr. Ransom: I object to that as immaterial and not within the scope of the issues here. The witness has been cross examined as to the different additions that he knew of and withdrawals.

Mr. Neumann: The witness is assuming to say that this drawing or diagram, or whatever you want to term it, is correct. Now, I am trying to test his knowledge.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. I can recall some of the changes that were made by particular ones whose initials are in the lower right hand corner of the sheet.

The Master: That is an answer.

623 Q. Can you tell the revision of 1914?

Mr. Ransom: I object to it as immaterial.

A. I do not recall now what change Scott made.

Q. Can you tell the revision of 1916?

A. The revision of 1916 represented in part the erasing of the two return tubular boilers in the main boiler room which were retired, and out-lining the Babcock & Wilcox boilers that were put in their place, and by adding on the boiler room extension.

Q. Is that all?

A. That is all that I recall now on the 1916 alteration.

Q. Now take the next revision?

The Master: Oh, I think we have had enough of this.

Mr. Neumann: Does the Master rule that I cannot question him any further on this?

The Master: I say I think we have had enough of this.

Mr. Neumann: I mean does the Master—

The Master: What is the purpose? If there is any definite purpose I will let you ask it, but I do not see what is to be accomplished by it. If it is simply for the purpose of testing his recollection and credibility I won't allow it.

Mr. Neumann: That is one. The second is to check up on property that was retired and put on there as indicating when the revision took place.

Mr. Ransom: That is only offered as showing present conditions.

Mr. Neumann: That is what you say now, we don't know what you may claim later on.

624 Mr. Ransom: This diagram is not offered as a historical survey.

Mr. Neumann: It is in, and I assume you will claim it is in for all purposes.

The Master: Yes, but at that I don't see what the importance of it is. Do you object to this question, Mr. Ransom?

Mr. Ransom: Yes.

The Master: Objection sustained.

Mr. Neumann: Then, there is no need of my asking any further questions along those lines, because they would all be along the same lines.

The Master: Quite correct.

Mr. Neumann: Exception. I am not going to waste the Court's time.

Q. Now, throughout your entire testimony, Mr. Alrich, you have talked about a man by the name of Haviland who made a survey of this property. So far as you know, Mr. Haviland is still living, isn't he?

A. He was living on May 1, 1920, which is the last day I saw him and talked to him.

Q. And since then you have not heard anything to the contrary?

A. No. I have been out of town several days in that time. He might have died and been buried in that time without my knowing it.

The Master: Just answer the question.

Q. Coming back to Exhibit 79, Mr. Alrich, will you indicate where the storage holder is for gas oil?

The Master: I think we have that on the record.

625 Mr. Ransom: It was gone into at great length.

The Master: Haven't we had that? It seems to me it is up in this upper right hand corner.

Mr. Ransom: It is so labeled, "Oil Tank, Oil Tank."

The Master: It seems to me that was perfectly clear on the record.

Mr. Neumann: Well, if it has been covered I don't want to cover it again.

The Master: You see I recalled it.

Cross-examination.

By Mr. Tobin:

Mr. Ransom: I call attention on the record to the fact that so far we have had three different deputy attorneys general appearing in this record. I don't know how many we are going to have.

Q. Do you keep a time record of how you spend your days, Mr. Alrich?

Mr. Ransom: I object to that as immaterial.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. I do on some occasions, but not as a regular rule.

Q. Take yesterday, did you keep a time record of yesterday?

The Master: What is the purpose of this?

Mr. Tobin: The purpose is this: We would like to ascertain as to how much time is charged up to these different sub companies. You will find in the inventory which is attempted to be introduced here that a certain amount of work is charged up as having been spent by the employees of the Consolidated Gas Company, and also for the further purpose of indicating how extensively this man is employed. He pretends to supervise about everything that there is at the works and the plant.

626 The Master: Go ahead.

A. I made no memorandum of yesterday.

Q. What is the practice in your office, Mr. Alrich, as to the time spent by yourself and your employees?

A. As to the subordinates, an exact time record is kept of the time devoted by them to the work of the different affiliated companies.

Q. As to time spent by you on work done for the New York & Queens Gas Company do you keep a time record of that and charge it against the company?

A. I have done such a thing at the time we first came in control of the property, and I remember distinctly—

Q. What is your practice, that is what I want to know?

The Master: For the last year or two.

Q. For the last year?

A. It has not been our practice during the last year or two.

Q. At any time during 1919?

A. I should say I made no memorandum during the year 1919 of any time devoted by me to the New York & Queens Gas Company.

Q. Have you charged any time against the New York & Queens Gas Company?

A. I say I made no memorandum at any time spent by me on work of the New York & Queens Gas Company.

627 Q. I am asking you if there was any of your time charged against the New York & Queens Gas Company?

A. That charge would be an act of the accounting officers of the company with which I would have nothing to do.

Q. Do you report to the Consolidated Gas Company as to the time spent by you on work of the New York & Queens Gas Company?

A. I may have made an oral report that I do not now recall.

Q. You made no written report?

A. No written report.

Q. Who has charge of various improvements, that is the supervision of the various improvements of these different subsidiary companies, including the New York & Queens Gas Company?

Mr. Ransom: I object to that unless limited to the New York & Queens Company.

Mr. Tobin: Well, I will limit it to that.

Mr. Neumann: It was all right when you asked that question, wasn't it, Mr. Ransom?

Mr. Ransom: In the Consolidated case.

The Master: Limit your question to the New York & Queens Gas Company?

A. Mr. William H. Bradley, the chief engineer of the Consolidated Gas Company, with the advice and counsel of Mr. George E. Woods, assistant chief engineer, and Mr. W. Cullen Morris, the engineer of construction.

Q. You have nothing to do with that part of the work?

A. I have something to do with the work——

Q. What part do you take as to improvements?

628 A. If some improvements were planned there now and the execution of the work was instructed, it would depend upon the character of it. If it was a gas holder——

Q. I asked you what part you take?

Mr. Ransom: Let him finish his answer.

The Master: He is answering your question?

A. (continued.) If it were a gas holder, the comparison of the bids received from different contractors would be in my hands. I would make a report to the officers I have mentioned recommending that one contract or the other should be accepted, and after the contract was made the supervision and the inspection of the material, the design of the structures, the design of the foundations, supervision and inspection of the work in the field would be in my hands, and after the work was done, if there were any extras claimed upon the work I would write a memorandum criticizing any such claims that might be made. All phases of the actual construction of the work would be in my hands. If it was an installation of a water gas machine I might have less to do with it than I would with a gas holder.

Q. May I ask you this, Mr. Alrich. Does this work which you have just set forth embrace all the companies which are a part of the Consolidated System?

Mr. Ransom: I object to that as immaterial.

Mr. Tobin: Well, it is important to know just how extensive this man's activity is. I think the witness should be allowed to answer that question.

The Master: I will let him answer.

Mr. Ransom: Exception.

629 A. It does.

Q. Do you go upon the ground when work is under construction?

A. I do, frequently.

Q. To what extent?

The Master: He said frequently.

Q. Can you tell the Master in some round figures the average amount of money that is usually under construction—take the year 1918, the amount of money set out and under construction by the Consolidated Gas Company and its various corporations?

Mr. Ransom: I object to that as immaterial and not within the issues of this case.

The Master: I will let him answer.

A. I haven't the figure in mind at all.

Q. You have no idea as to that figure?

A. Not now.

Q. Can you tell as to the ownership of these various buildings and improvements that are being set up at various times by the New York & Queens Gas Company?

The Master: What do you mean by the ownership?

Mr. Tobin: I would like to know whether this witness can tell who owns these buildings that are being constructed from time to time.

The Master: What buildings?

Mr. Tobin: Take for instance a new gas holder that is being put up.

The Master: I understand it is being put up by the New York & Queens.

Mr. Tobin: I want to know whether he knows that or not.
630 The Master: I will let him answer the question.

A. I do know.

Q. How do you know?

A. Because such work is always negotiated in the name of the particular company, and the contract is executed by the officers of that particular company, and such an executed contract comes into my hands.

Q. The name is simply given to you, the name of the owner of the property is simply given to you by somebody else, is it not?

A. No, I see the executed contract.

Q. Who does the marking of these plans and specifications?

A. The drafting department.

Q. Is that under your supervision?

A. In part. I am one of the construction engineering staff.

Q. And that is all under your supervision?

A. Not entirely.

The Master: He says in part.

A. We also get an executive order when such work is authorized,

stating the name of the company in whose behalf the work is to be done.

Q. Who sends you that executive order?

A. The officers of the company involved.

Q. Who would it be, the Secretary or the Vice-President or General Manager or who? Taking the New York & Queens, who would send you that order?

A. Mr. Spear.

Q. As General Manager?

A. Well, I don't know pursuant to what office he would send it to us. I know as a matter of fact he would communicate to us 631 the action of the directors of that company.

Mr. Tobin: We would like to have Mr. Alrich locate the exception in the deed, Exhibit 43. That would help us in our checking up.

Q. Can you indicate on the map, Mr. Alrich the exception in this deed?

A. I don't know what I understand what you mean.

Q. I will show it to you?

A. My answer is that I can.

Q. Will you kindly indicate it on the map, Mr. Alrich?

A. There was a previous conveyance from Henry Wilson to the Newtown and Flushing Gas Company which included an irregular area, making an irregularly shaped projection up into what is now Lot 40 of Block 171. The conveyance from the Flushingside Realty Company to the New York & Queens Gas Company described the regular figure, excepting the irregular area included within that that had already been conveyed by Henry Wilson.

Q. You claim that that exception is covered by the deed from Wilson to the New York & Queens Gas Company?

A. That property had already been conveyed to the New York & Queens Gas Company by Wilson, and the Flushingside Realty Company held no fee to that. The fee to it was already in the Gas Company.

Redirect examination.

By Mr. Ransom:

Q. How is the gas oil conveyed from the two oil tanks to the generators, by pipes or how?

A. By a pipe.

632 Q. Can you state the approximate location of the pipe?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The map or diagram is supposed to be complete and correct.

Mr. Ransom: He said it was not.

Q. Does this show the location of the oil pipe?

A. It does not show the location of the pipe, no, it shows the tanks without the pipe connections.

Q. Can you indicate about where it is?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial. He is trying evidently to impeach his own exhibit.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: I don't see how it is specially material, but I will take it.

A. In a general way I would state, there being no memorandum before me, that the pipe runs southward from the oil tanks a distance of about twenty-five feet, then turns eastward to a point just west of the coal bins, and then turns southward along the westerly side of the coal bins and the generator house in to the pump house which is shown at the southwest corner of the generator house, which contains two machines.

Mr. Neumann: I move to strike out the witness' answer upon the ground that it appears from the answer itself that it is based on a guess.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Then about where would you say it was with respect to this area (indicating on map)?

A. Indicating on Exhibit 77, I will trace the line I have described with my pencil.

633 The Master: The witness did not trace it, he simply indicated it without marking the exhibit.

Q. Referring to the portion of land which is between the area on which is located the oil tanks, and the stove shed, and the pump shed, and so on, if there were a street there—

The Master: It is the space between the oil tanks and the main operating plant which would be Center Street, I think it is called, if there was such a street, and it was continued through.

Q. Is that within the company's enclosure and fence?

A. It is.

The Master: It is actually fenced in?

The Witness: It is.

Q. A fence comes down on the north side of the large storage holder—

The Master: To interrupt you, Judge Ransom, I think we will get a better statement on the record. Does the fence enclose the property shown in pink on Exhibit 47?

The Witness: It does, and somewhat more.

The Master: Where does it cover more than the space shown in pink, where is the fence?

The Witness: It extends along the easterly side of Lot 40 southward until it abuts the northerly side of Lot 31.

The Master: In other words, the easterly line of Lot 40 continues straight down?

The Witness: It is.

The Master: So that if this Map 47 were tinted in pink showing actual possession, then the fence line would include the additional space between the line continued of the easterly line of 634 Lot 40 down to where it meets Lot 31?

The Witness: It would.

Q. The condition which you have described has been the condition for several years?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and not the proper way of proving adverse possession, if that is their claim.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. The company has been in use of that area as far back as my knowledge—

The Master: No.

Mr. Neumann: I move to strike that out.

The Master: Has the condition which you have just described with this fence been so for several years?

The Witness: I do not know—

Mr. Neumann: That is enough, he has answered.

The Witness (continuing): I don't know when the line of the fences as they now stand was established. The fences have been changed since my knowledge of the plant began.

The Master: I know, but has the present condition been there for several years?

The Witness: No, this fence, as I have already testified was built last year.

The Master: Where was the fence before that?

The Witness: I do not recall.

The Master: What do you mean, last year?

The Witness: September, 1919.

635 Q. You are referring to the wire fence?

A. The wire fence that I have already testified to.

The Master: Didn't you see the fence that was there just before the wire fence?

Mr. Neumann: If the Court please, that is objected to as incompetent, irrelevant and immaterial. The witness has fully covered this subject.

The Master: I cannot accept the witness' statement without further inquiry, having in mind his familiarity with this plant. Mr. Alrich cannot leave a statement on the record so far as I am concerned, that he does not know where the fence was which preceded this wire fence.

Mr. Neumann: How can he say anything different if he doesn't know different?

The Master: I am going to find out what he means by saying he doesn't know.

Mr. Cummings: I object to it as immaterial anyhow.

The Witness: The fences upon the property prior to that, as I recall, were rather patchy, and there were parts of it, as the photographs show, that were not enclosed at all. As I recollect, the corner down at Myrtle Avenue and Farrington Street was not enclosed—

The Master: Don't let us get down to the corner. I am talking of this space that is claimed to be a street, or intimated as a street. I want to know where the fence was along there prior to the wire fence?

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial and not within this witness' province so to testify,
636 and if properly qualified to testify, he has already fully covered that subject.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: I don't remember the fence at all on the north side of Lot 31, clear from Farrington Street.

The Master: Was there any fence across that street prior to the wire fence?

The Witness: I do not recall a fence at the easterly side; I think there was at the westerly side along Byrd's Alley.

The Master: I am talking about the easterly side.

The Witness: I don't remember such a fence. It was in use and occupied—

Mr. Neumann: I move to strike that out.

The Master: Motion granted. What do you mean, it was used and occupied? You had no buildings in that street?

The Witness: Yes, as I remember, there were frame structures occupying that. I remember them particularly at the time the holder was being built.

The Master: How long ago was that?

The Witness: In 1915.

The Master: I guess we have enough on the record.

Mr. Hyatt: I have a few questions.

The Master: I will straighten out now once for all the question of Mr. Hyatt representing the District Attorney of Queens County.

I got a letter from the District Attorney of Queens County which
637 in substance said that the Corporation Counsel was not authorized to act for him.

Mr. Hyatt: You saw a letter to the contrary.

The Master: I wrote to the District Attorney of Queens County asking him to appear here, in some form, either in person or by representative, and make the statement on the record. I have heard nothing further from him, and I do not know of any representative here, except as you claim to be a representative, Mr. Hyatt. I think

under the circumstances I am going to decline to hear you until this matter is straightened out.

Mr. Hyatt: May it please your Honor, I gave you a letter directed to Mayor Hylan, in which he asked Mayor Hylan to ask Mr. O'Brien to appear and represent him; and then there was attached to that letter another which requested Mr. O'Brien to appear, and Mr. O'Brien has directed me to come here and represent the District Attorney in that connection.

The Master: The District Attorney has a right to change his counsel and has a right to withdraw his request for the Corporation Counsel.

Mr. Hyatt: Your Honor, on your own statement, you said that you would not alter the situation without his personal appearance here.

The Master: I did not say that.

Mr. Hyatt: I misunderstood you, then.

The Master: I said I requested him to be here to make the statement.

638 Mr. Hyatt: Then the burden is on him, is it not?

The Master: I am not going, in view of the written communication—

Mr. Hyatt: I take an exception.

Mr. Cummings: I do not think it is fair to the Corporation Counsel, without giving him some notice that this was going to be brought up here today.

Mr. Ransom: He had notice from the District Attorney of Queens.

The Master: The unfairness in the situation is on the part of the District Attorney of Queens County; and it is to the District Attorney of Queens County that Mr. Hyatt has got to look, and it is to him that any criticism must be directed.

Mr. Hyatt: I think all the presumptions, your Honor, are in my favor.

The Master: Not at all. I have gotten an official communication addressed to me as the Master in this case, apparently signed by the District Attorney of Kings County.

Mr. Ransom: Queens County.

The Master: Of Queens County.

Mr. Hyatt: That is not an official communication if it is apparently signed, your Honor.

The Master: I do not know his signature. All I know is that it came in the mail on the letterhead of the District Attorney of Queens County, and purports to be signed by the District Attorney of Queens County. I am not going to permit any counsel to appear for the District Attorney of Queens County when under his signature he says he is not authorized to appear for him.

Mr. Hyatt: I take an exception.

639 Mr. Ransom: The District Attorney of Queens County notified me to the same effect, and said that he was also writing to the same effect to the Honorable A. S. Gilbert, and also to the Corporation Counsel.

Mr. Hyatt: I do not understand what right the District Attorney

would have under the circumstances to communicate with any of the counsel of record in this proceeding, your Honor, other than the Corporation Counsel himself.

The Master: I will not recognize Mr. Hyatt further until I get it straightened out.

Mr. Hyatt: Exception.

Mr. Cummings: Had Mr. Hyatt known of this previously he would have been able to bring it up clearly. I think it is unfair.

LEWIS B. GAWTRY, called as a witness on behalf of the Complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Gawtry, where do you reside?

A. 58 East 66th Street, New York.

Q. With what institution are you now connected?

A. The Bank for Savings of the City of New York.

Q. In what capacity?

A. First Vice President.

Q. Until recently what was your connection with the Consolidated Gas Company of New York?

640 A. Up to the 1st of March, 1920, I was Vice-President.

Q. How long had you been connected with the Consolidated Gas Company before your resignation?

A. Twenty-five years.

Q. In what capacity did you first become connected with the Consolidated Gas Company?

A. Purchasing Agent.

Q. Did you organize the purchasing department of the Consolidated Gas Company?

A. I did.

Q. And ever since that time down to March, 1920, did you have supervision over that department?

A. I did.

Q. What were the different capacities which you fulfilled with the Consolidated Gas Company?

A. I started as purchasing agent, became assistant secretary, secretary and vice-president.

Q. Assistant secretary in 1898?

A. Yes.

Q. Secretary in 1900?

A. Right.

Q. Vice-President in 1902?

A. Right.

Q. During the twenty-five years down to March, 1920, the purchasing department was under your direction and supervision?

A. It was.

Q. For a number of years prior to your resignation as vice-pres-

dent of the Consolidated Gas Company, did you conduct the negotiations and negotiate the agreements on behalf of that company for the purchase of coal?

A. I did.

641 Q. Was it the practice of the Consolidated Gas Company during that time to purchase coal for certain other companies affiliated with it?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, unless confined to the New York & Queens Gas Company.

The Master: Overruled.

Mr. Neumann: Exception.

A. It was, except for the Mutual.

The Master: I want to get my record straight today. There is no appearance by the Queens County District Attorney, is there—no counsel representing the District Attorney of Queens County?

Mr. Chambers: You have ruled him out, apparently.

Mr. Cummings: You have ruled him out.

The Master: I am saying now, Mr. Hyatt having left the room, is there any counsel representing the District Attorney of Queens County? I understand there is not, and the record will so show. I know the District Attorney of Queens County ought to be represented, and I wanted the record to show that he is not.

Mr. Chambers: If the Corporation Counsel cannot get in any other way then we will appoint him counsel.

The Master: You will not.

Mr. Chambers: I will get some more. The Court cannot stop us from having another.

The Master: I am going to make a rule about you now. Who is going to handle this case for the Attorney General?

Mr. Chambers: Why, there are several of us here.

642 The Master: Well, who is going to do the talking now?

Mr. Chambers: I cannot tell you.

The Master: Somebody is going to do the talking for the Attorney General's Office, and one counsel is going to be recognized, and not more than one. Who is it going to be, Mr. Chambers? You can make your own selection.

Mr. Chambers: I cannot tell you at this time.

The Master: Mr. Tobin, isn't it?

Mr. Tobin: Yes.

The Master: Having last taken the floor, I will recognize Mr. Tobin and nobody else.

Mr. Chambers: I take an exception.

The Master: And the stenographers will take no statement by anybody else from the Attorney General's office until I get a statement that Mr. Tobin has been supplanted.

Mr. Tobin: Why, that is not proper, if the Master please, because I am working entirely under the direction of Mr. Chambers.

The Master: I want to know who represents the Attorney General

here once and for all. I am not going to take objections by all counsel. Mr. Chambers can make the statement or not, just as he pleases.

Mr. Chambers: No, I decline to make the statement as to who is going to do the talking. I am perfectly willing to abide by the ruling that one counsel talk at a time. You can make your ruling and I will take exception.

The Master: I did not say anything about one counsel talking at a time. There is only one going to do the talking today.

643 Mr. Chambers: I take an exception. I decline to say that today, because I have not considered that. Throughout these cases I think it is perfectly proper for the Attorney General to be represented by one or more counsel, and it is perfectly proper for one or more to cross-examine, so long as one starts it and completes it.

The Master: For the orderly conduct of this proceeding I shall only recognize one counsel talking in behalf of the Attorney General. The Attorney General can have six representatives here if he so desires, but only one counsel will be recognized today. Mr. Tobin having taken the floor and cross-examined the last witness, I am going to recognize Mr. Tobin and nobody else today.

Mr. Chambers: I take an exception.

Q. Mr. Gawtry, in making coal purchases did you take into account the requirements of the New York & Queens Gas Company and did you purchase coal for that company?

A. Yes.

Q. What kind of coal did the New York & Queens Gas Company purchase?

A. Principally anthracite, broken size.

Q. That is what is known as broken anthracite coal?

A. That is correct.

Q. The largest size of anthracite?

A. Yes.

Q. Is that a size of coal made especially for gas-making purposes?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown by this witness yet to testify to any such facts.

644 The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Practically, yes.

Q. What has been the practice of the purchasing department of the Consolidated under your direction, and of the coal companies with respect to contracts for anthracite coal, as to the time of the year when contracts are made?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not binding on this company, not shown to cover this company.

The Master: Overruled.

Mr. Neumann: Exception.

A. All anthracite contracts start from April 1st of each year and are made for the period of a year.

Q. The coal year, when you use the expression "coal year" you mean from April to April?

A. April to April.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving a practice or custom.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Beginning April, 1918, did you make any contracts as of that date for the ensuing year, including the months of January, February and March of 1919?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not shown to cover this company.

The Master: Overruled.

Mr. Neumann: Exception.

645 Mr. Tobin: There is the further objection, if your Honor please, that the best proof is the contract itself, and we ask that it be introduced.

The Master: Overruled.

Mr. Tobin: Exception.

A. There were no contracts made during that period, because the Government had charge of the coal supply.

The Master: Because who had charge of the coal supply?

The Witness: The Government.

Mr. Neumann: One moment. I move to strike out that part of the witness' answer "because the Government had control of the coal supply."

The Master: Motion denied.

Mr. Neumann: Exception.

Q. By the Government, you mean the United States Fuel Admin-
stration?

A. I do.

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Neumann: Exception.

Q. So that coal secured by the New York & Queens Gas Company during January, February and March of 1919 was not pursuant to any contracts with the coal companies?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and nothing yet shown with reference to the New York & Queens, no foundation laid for it.

The Master: Overruled.

Mr. Neumann: Exception.

646 Mr. Tobin: I ask, if the Master please, the date—I cannot just recall the date that Mr. Gawtry left the company.

The Master: March 1, 1920.

A. What was the question?

(Question repeated by the stenographer.)

A. That is correct.

Q. Did you ordinarily purchase your coal through jobbers or deal directly with the coal companies?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving a custom or practice.

The Master: Overruled.

Mr. Neumann: Exception.

A. Direct from the coal companies, the parent companies.

Q. That is, as wholesalers?

A. As wholesalers.

Mr. Neumann: I move to strike that answer out, because I do not think that means anything, "wholesalers."

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. During the coal year beginning April 1, 1919, were you in fact able to get all the coal that you required from producers?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving it. It is a conclusion of this witness. He may state what he did, and from that the Master must determine whether they were able to get coal or not.

647 The Master: I think there is a good deal of force in that objection. I will sustain it.

Mr. Ransom: It is your feeling that the question calls for a conclusion?

The Master: Yes.

Q. During that coal year what did you do to get coal?

A. We tried in every possible way. We had to go to Washington frequently, to Philadelphia, to the railroad officials of the different roads on which coal is shipped, to the Coal Administration, Mr. Garfield—every possible way.

Mr. Neumann: I move to strike from that answer the words "possible way."

The Master: Overruled.

Mr. Neumann: Exception.

Q. Mr. Garfield was the director of the United States Fuel Ad ministration during that time?

A. He was.

Q. Did you get all your coal from producers, or did you have to get it from other sources?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, vague and indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

A. We got most of it from producers; we got some from brokers.

Q. During the coal year beginning April 1, 1918, were the prices for anthracite coal fixed by agreement between yourselves and coal companies, or were they fixed otherwise?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

648 The Master: Overruled.

Mr. Neumann: Exception.

A. 1918 that is?

Q. Yes, during the coal year beginning April, 1918?

A. Fixed by the United States Government.

Q. The Fuel Administration?

A. The Fuel Administration.

Q. Were railroad and other charges likewise fixed by the Government?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. They were.

Mr. Neumann: If the Court pleases, if the Government fixed these prices there must have been some order of some kind, and that would be the best proof of it.

The Master: Yes, but this proof is good enough.

Mr. Neumann: I except, your Honor.

Q. As of December 1, 1918, what was the price thus fixed on broken anthracite coal?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The record thus far indicates, if anything, that the coal prices are fixed April 1st of each year.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: A further objection, if your Honor please, that the contracts are the best proof of what the price was, and I think they ought to be put in instead of asking this witness that question. We ought to have the contracts, as the best proof.

649 The Master: Overruled.

Mr. Tobin: Exception.

A. \$5.85 at the mines, plus the railroad freight of \$1.85, plus water freight of 60 cents, taxes and insurance, to bring it alongside the plant, alongside Flushing.

Mr. Neumann: I now move to strike that answer out upon the ground that the question of counsel was a general question.

The Master: Motion denied.

Mr. Neumann: Exception.

By the Master:

Q. As I understand it, all anthracite coal was \$5.85 at the mine?
A. Of that size, broken size, yes.

Q. In addition to which you had the railroad and water transportation and the insurance and war taxes?

A. Right.

Q. No matter what plant it went to?

A. Yes.

By Mr. Ransom:

Q. Was \$5.85 the April price or December price?
A. The December price.

Mr. Neumann: One moment. I move to strike that answer out, because the present state of the record indicates that the prices were fixed in April of each year.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Did the U. S. Fuel Administration from time to time change the price per gross ton at the mine?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it. If it was by an order, the order would be the best proof of it and not this witness' statement.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Several times during the year.

Q. And the price per gross ton at the mines was what was called the base price?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and that is a question for the Master to determine, not for this witness.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. It was.

Q. Did the United States Railway Administration from time to time change the charges for railroad freight and were there also changes in the water freight and the tax and other elements that you have referred to?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not the best way of proving it. The best proof would be the orders themselves.

The Master: Overruled.

Mr. Neumann: Exception.

A. There were changes.

Q. Can you give us the price of broken anthracite coal as fixed by the United States Fuel Administration as of January 1st, 1919, and throughout the year following, including therein the price at the mine and the variations in railroad freight, lighterage charges, and so forth, to the New York & Queens Gas Company's plant at Flushing?

651 Mr. Tobin: Objected to.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. What price the Government fixed is immaterial so far as this case is concerned.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, we believe that the best proof is the contracts or the memorandums or agreements, had by the New York & Queens Gas Company, as concerns this particular transaction. We do not think this witness ought to be allowed to testify in that way.

The Master: Apropos of this objection, Mr. Gawtry, do I understand your testimony to be that this complainant company was compelled to and actually did pay the prices that you are now testifying to?

The Witness: They did.

The Master: In other words, it had no other prices that it could pay?

The Witness: None.

Mr. Ransom: The vouchers are in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception. What is that, Mr. Ransom?

Mr. Ransom: The vouchers are in evidence.

Mr. Neumann: I do not think that proves the price.

The Master: Answer the question. Mr. Gawtry, or counsel will keep this up all day.

A. I can give those prices; yes, sir.

Q. Will you do so?

652 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. In the year 1919, January, February and March, coal at the mine was \$5.95 a gross ton.

By the Master:

Q. \$5.95?

A. \$5.95, the railroad freight was \$1.85, and the f. o. b. price at the port was \$7.80, and we had water freight, tax and insurance. During the months of April, May and June, the price at the mine was \$5.85, a reduction of 10 cents, the railroad freight was the same, \$1.85, plus the same water freight, the same tax and the same insurance.

Q. You did not tell us what it was alongside in January, February and March, including water freight and insurance.

A. \$8.495.

Q. And what was it the next period of three months?

A. \$8.395. From July 1st to December 31st the coal at the mine was \$5.85, and there was an increase of 5 cents.

Q. \$5.85?

A. \$5.85.

Q. I thought it was \$5.85 for the prior period. What was it, \$5.80?

A. It was \$5.95 for the first three months, and \$5.85 for the next three months.

Q. Then it was \$5.85 again?

A. Yes, and there was an increase of 5 cents for railroad charge.

Q. I see. I thought your statement of 5 cents increase had to do with the price at the mine?

653 A. For the six months July 1st to December 31st the railroad changed from Port Johnson up to Pier 18, Jersey City, and made a longer haul for which they secured 5 cents extra freight, and that made the railroad freight 1.90, price alongside Flushing approximately \$8.445.

By Mr. Ransom:

Q. What was the insurance rate during 1919?

A. A quarter of one cent. It varies a little, but it is generally about that. Approximately two cents a ton.

Mr. Neumann: I move to strike that answer out on the ground it appears it is a guess.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Is Flushing within or outside the New York towing limits?

A. Outside the towing limits.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Is the lighterage charge on coal greater outside the towing limits than within them?

A. It is.

Mr. Neumann: Object — on the ground it is incompetent, irrelevant and immaterial. If this is the subject of a contract, the contract would indicate all that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. Beginning April 1, 1919, the coal year beginning April 1, 1919, did you have contracts for anthracite coal, including the requirements of the New York & Queens Gas Company?

654 A. I did.

Q. What contracts for anthracite coal were in force during the coal year beginning April 1, 1919?

A. A contract with the Lehigh and Wilkes-Barre Coal Company including the New York & Queens Gas Company for that period.

Mr. Ransom: The vouchers are in evidence.

Q. That is, the New York & Queens Gas Company received anthracite coal only under the Wilkes-Barre contract?

A. Correct.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial. The contract, or contracts, if there are others, would indicate that.

The Master: Overruled.

Mr. Neumann: Exception.

Q. What is the contract price at the mine under that contract?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The present state of the record —

The Master: Objection sustained.

Q. You have the contract here, Mr. Gawtry?

A. Yes.

Q. Will you produce it?

A. (Producing paper.) \$5.85 at the mine.

Mr. Neumann: I move to strike that out.

The Master: Motion granted.

Mr. Ransom: I offer in evidence the contract that is produced by Mr. Gawtry under date of April 17, 1919.

Mr. Neumann: May we see it?

655 Mr. Ransom (handing counsel): I do not offer in evidence any of the pencil marks or ink marks which appear thereon, outside of the letter.

Mr. Neumann: You are offering the letter, too, are you?

Mr. Ransom: Well, the letter is the contract.

Mr. Neumann: Oh, yes, the letter is the contract. How about this little page that is on the back there, are you offering that, too?

Q. Mr. Gawtry, is that a copy of a letter which you sent to the Lehigh and Wilkes-Barre Coal Company in reply to their letter of April 17th?

A. It is.

Q. It was signed by you?

A. Yes.

Q. And this bears your initials?

A. Yes.

The Master: I take it the two letters together make the contract; is that so?

The Witness: Yes.

Mr. Ransom: I offer in evidence the letter of the 17th and the reply.

Mr. Neumann: If the Court pleases, this is objected to on the ground that it is immaterial, irrelevant and incompetent, and not properly proven, nothing herein indicates that this relates to the supply of coal for the New York & Queens; the signature has not been proven, the reply sent to it has not been proven in proper order, and at best it is immaterial, so far as on its face it would indicate that it had anything to do with this company.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Well, if your Honor please, there isn't the least bit of—there is no indication at all that it is any part of an arrangement or agreement with the New York & Queens Gas Company.

The Master: Yes, Mr. Gawtry has testified to the fact already.

Mr. Tobin: I know, but you haven't before you any agreement between the New York & Queens Gas Company or Consolidated Gas Company as to that.

The Master: I think Mr. Gawtry's sworn statement that that is the contract that affected the New York & Queens requirements is sufficient.

Mr. Ransom: And you have the testimony of Mr. Spear as to the manner in which the coal is purchased under this contract.

Mr. Tobin: I object to this contract because there is nothing in there to indicate that it is any part of this case.

The Master: Objection overruled.

Mr. Tobin: Exception.

Contract marked Complainant's Exhibit No. 80.

Q. Mr. Gawtry, subsequently and on or about the 27th day of June, 1919, did you receive a letter from the Lehigh & Wilkes-Barre Company with respect to an increase in the rate for rail transportation?

A. Yes.

Q. That was based upon Jersey City rather than Port Johnson delivery?

A. Change at piers.

Q. And that was the 5 cents change which you referred to?

A. It was.

Q. And thereafter that increase of 5 cents was in effect?

657 Mr. Neumann: I object to it as incompetent, irrelevant and immaterial. The correspondence, if anything, might be better than the witness' testimony.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. It was in effect.

Q. And this is the letter received by you (handing paper)?

A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Neumann: You are offering this, of course, without the corrections here in pen and ink?

Mr. Tobin: There are some pen and ink corrections.

Mr. Ransom: I am not sure.

Q. Are these ink marks there in your handwriting?

A. Yes.

Mr. Ransom: I do not offer them.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, the letter is not signed by anyone, it is signed on the typewriting machine, and not the proper way of proving a letter of that kind.

The Master: Objection overruled.

Mr. Tobin: We offer the further objection that there is nothing to indicate that it has anything to do with the New York & Queens Gas Company.

The Master: That letter came to you by mail, I suppose?

The Witness: It did.

658 The Master: In the regular course of business?

The Witness: It did.

The Master: Following that you got bills for the increased prices?

The Witness: Yes.

The Master: Mark it in evidence.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Letter marked Complainant's Exhibit No. 81.

Q. Mr. Gawtry, the price fixed by this contract of April 17, 1919, with the Lehigh and Wilkes-Barre Coal Company represented the best and lowest price that you could get for anthracite coal for that coal year?

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial, calls for a conclusion, not the

proper way of proving it. He might say what he did, and the Master might draw his own inferences therefrom.

The Master: As I understand it, that was the Government price, wasn't it?

Mr. Ransom: Not as to the entire coal year 1919. It was 10 cents below the price fixed by the Government, but the Government control only ran—went out early in the calendar year 1919.

The Master: All right.

Mr. Tobin: In 1920.

Mr. Ransom: They had fixed a price, as I understand it, of \$5.95, and then the Company, as soon as the Government relinquished control, was able to make a contract at \$5.85.

659 The Master: While the form of the question is apparently in conflict with the rule, I think the objection is futile, in a way, because you can bring it out in another form. What was the price in this Lehigh Valley contract?

Mr. Ransom: \$5.85 a gross ton at the mine.

The Master: What was the date of it?

Mr. Ransom: April 17, 1919.

The Master: Well, April 19th, were you in touch with the market conditions as to Anthracite broken coal?

The Witness: I was.

The Master: Did you know at that time of any place where you could get coal at a cheaper price than the coal referred to in this letter?

The Witness: We could not.

The Master: Well, tell us why you make that statement, on what you base that answer?

Mr. Tobin: Well, if your Honor please, we desire to object to the question by the Master; that is, we believe that the witness should be allowed to testify as to what he did.

The Master: I am asking him now what he did.

Mr. Tobin: But to say that was the best price obtainable—

The Master: I did not say that. I asked him if he knew any place where he could get it cheaper, and he said he could not, and I am going to ask him to supply the basis for his statement.

660 The Witness: I was in touch with every large coal-producing company, that is coal that we would use. There are coals that we cannot use for gas-manufacturing purposes. Most of those prices are the same, anthracite prices are made April 1st, and are practically the same in all the large companies, and we buy at the price that Burns Brothers and other dealers buy at, and they in turn add their commission and sell it to individuals, and we save that, we buy direct.

The Master: The point I wanted to bring out, Mr. Gawtry, was, that in April, 1919, you made a contract with the Lehigh & Wilkes-Barre Coal Company at \$5.85 a ton. I want to know what information you had, and how you got it, that that was the wholesale price, and that you could not get it any cheaper?

The Witness: Because I got prices from probably twenty different anthracite people whose coal we would use, and no price near that

Mr. Ransom: That is all.

The Master: Cross examination, Mr. Tobin?

Cross-examination.

By Mr. Tobin:

Q. Mr. Gawtry, you left the Consolidated Gas Company on March 1, 1920?

A. Yes, sir.

Q. What was the practice as concerns the Consolidated Gas Company and the New York & Queens Gas Company, as to the extent of coal desired or required by such company?

A. Mr. Spear gave me, prior to April 1st of each year, the approximate amount of broken coal that he would use during 661 that year, which was 5,000 tons, so far as he could tell, and we included it in the Consolidated contracts, this 5,000 tons, New York & Queens Gas Company.

Q. Was that letter directed to the Consolidated Gas Company by Mr. Spear; that is, was the letter sent by Mr. Spear?

A. No, word of mouth. I saw Mr. Spear every day or so, and telephoned him once or twice a day, probably.

Q. Well, who directed the deliveries—that is, who directed the deliveries when this contract was made, as you say, for the large amount of coal, who directed the deliveries of the New York & Queens Gas Company, just taking into account this particular company?

A. Mr. Spear would telephone to Mr. Franklin, who has charge of the coal distribution of the Consolidated Company, that his stock was running low, and he would need a cargo of coal, and Mr. Franklin would assign the first cargo available to him.

Q. There was no written order served by the New York & Queens Gas Company direct to the Consolidated Gas Company?

A. Not that I know of.

Q. In other words, the practice was simply to give all orders, and there is no record, so far as you know, of a specified order from the New York & Queens Gas Company as to what they would need in the way of coal?

A. Not so far as I know.

Q. Can you tell us what was the practice after the coal was ordered by the Consolidated Gas Company as to the payment for the same by the New York & Queens Gas Company?

A. The bills were forwarded to the New York & Queens Gas Company, and paid by them direct.

662 Q. They did not go through the offices of the Consolidated Gas Company at all?

A. I do not think so. I think they went direct to the New York & Queens Company.

Q. In what manner was the New York & Queens Gas Company notified as to the price that they should pay for the coal?

A. I notified them after making the contract.

Q. After a contract was made by you for the coal, then you in turn notified the New York & Queens Gas Company—as to just what figures did you notify them?

A. As to the contract prices.

Q. As to the contract price at the mines?

A. The contract price delivered alongside.

Q. At the time that the contract was made, you could not tell as to the exact amount of freight to pay?

A. Yes, we could, because that freight price is fixed as a matter of record, public records, fixed by the United States Government.

Q. Well, the government did not have control entirely in the year 1919, as to the price of coal; it had something to do with the freight rate but not entirely the price of coal?

A. Not the price of coal, but the freight rate.

Q. The freight rate for the entire period of the coal year 1919?

A. Through the Interstate Commerce Commission.

Q. Was that by a written communication from the Consolidated Gas Company as to what they should pay?

A. Yes.

Q. By whom was that letter signed in behalf of the Consolidated Gas Company?

663 A. By me.

Q. By yourself?

A. Yes.

Q. In the handling of the coal, that is in the purchase of the coal by the Consolidated Gas Company, what was exacted or taken or charged for the handling of the coal and of the coal question or the coal problem by the Consolidated Gas Company?

Mr. Ransom: Objected to as vague and indefinite.

The Master: No, I think I understand what he means, and if Mr. Gawtry does not know he can say so.

Q. I would like to know what the Consolidated Gas Company received for handling the coal problem or the coal situation, as they took care of the coal problem for the New York and Queens?

The Master: I understand what you want.

A. Not one cent.

Q. Not one cent?

A. Not one cent.

Q. Did the New York & Queens Gas Company pay you anything at all for your services in connection with the handling of the coal problem?

A. Not one cent.

Q. In your opinion, Mr. Gawtry, if you were to purchase just the coal for the New York & Queens Gas Company, that is, I mean the quantity of coal needed, and that you stated here it would run about 5,000 tons, what would you be able to do in the way of a price for the same?

A. I do not think I could get as good a price as we got under this method, and that was the object of doing it this way.

664 Q. You feel satisfied that in a combined contract, or in one contract, you got a better price for the New York & Queens Gas Company?

A. I am very sure of it.

Q. Did you check that up as to what gas companies or other companies operating outside of the Consolidated Gas Company were able to do, as to whether they would be able to get a better price for coal?

A. I did not check it up, no.

Q. You did not, Mr. Gawtry?

A. I had no way of doing it. You mean companies outside, like New Jersey and Connecticut?

Q. Yes, wherever small quantities were desired or needed, as to whether they were buying coal cheaper. Take, for instance, the New York & Richmond Gas Company, did you check up as to what they were paying for coal as a small independently operated gas company?

A. No, I did not.

Q. So that your information as to the price obtained for the New York & Queens Gas Company is simply based upon what you did yourself, because you did not go outside your field as an officer of the Consolidated Gas Company?

A. I did not.

Q. Can you tell me again the name of the company that had the coal contract for the New York & Queens Gas Company?

A. The Lehigh & Wilkes-Barre Coal Company.

Q. Where are their offices, sir?

A. 143 Liberty Street.

Q. Is it a New York corporation or a Pennsylvania corporation?

A. I do not know.

Q. Do you know the personnel of the company, I mean the officers of the company?

665 A. Only the vice-president and general agent.

Q. What is his name?

A. Mr. Heilner.

Q. Do you know whether he is in any way connected with the Consolidated Gas Company?

A. I know that he is not.

Q. He is not?

A. He is not.

Q. He is not a stockholder or officer in any way?

A. He is not an officer; I do not know whether he is a stockholder.

Q. You don't know whether he has any affiliations with the Consolidated Gas Company?

A. He has no affiliations except he may be a stockholder. That I do not know. We have some 6,000 stockholders.

Q. Well, do you know the other officers of the Lehigh company?

A. I do not.

Q. You do not know their names, sir?

A. No.

Q. Do not know any. Have you any knowledge at all as to whether the other officers of the Lehigh company are interested in

the Consolidated Gas Company or the New York & Queens Gas Company?

A. I have no knowledge.

Q. You have no knowledge of that at all?

A. No, sir.

Q. Was any part of this coal shipped—in making the arrangements for shipping to the New York & Queens Gas Company, did the Consolidated Gas Company have anything to say as to how it should be brought to the plant of the New York & Queens Gas Company? That is, I mean the arrangements for boats and

666 freight and things of that sort, was that all cared for by the Consolidated Gas Company?

A. By the coal company; they delivered alongside of docks of the various companies.

Q. The docks of the various companies?

A. Yes.

Q. And then their contract ended?

A. Yes, sir.

Q. Can you say whether in the delivery of coal to the docks of the various companies, that then there ended the interest or the supervision, as we might say, of the Consolidated Gas Company as to these coal contracts?

A. Except if the coal were bad, if it were not up to the standard Mr. Spear would telephone me or come in or get into communication with me and say it had too much ash or not in good shape, or not well prepared, and I would then take it up with the coal companies.

Q. Did any responsibility rest on the Consolidated Gas Company in the furnishing of this coal to the New York & Queens Gas Company, that is we will say, it being a contract made by the Consolidated Gas Company and the coal was found faulty or lacking in the necessary qualities for gas-making purposes, what was the relationship then between the New York & Queens Gas Company and the Consolidated Gas Company?

A. The Consolidated Gas Company was merely an agent.

Q. Merely acted as an agent?

A. Not responsible for the coal.

Q. And is it so stated in the arrangement or agreement made between the New York & Queens Gas Company and the Consolidated Gas Company?

A. It is not.

667 Q. Well, how would that be understood or known to the New York & Queens Gas Company?

A. Because our relationship is close enough that Mr. Spear would soon communicate or make known to me, in all probability, if the coal was not satisfactory, and I would then take it up with the coal company.

The Master: No, Mr. Tobin's question was, How would the New York & Queens know that the Consolidated had no responsibility but was simply acting as an agent?

The Witness: We acted as buying agents for them.

Q. No, but the contract was made by you?

The Master: Mr. Tobin wants to know what knowledge the New York & Queens Company had as to your limited responsibility?

The Witness: I think in all probability we probably discussed it in conversation, nothing in writing about it.

Q. Between yourself and whom, sir?

A. Mr. Spear.

Q. And yourself?

A. Yes.

Q. The only contract in existence as to this coal was made by the Consolidated Gas Company, is that correct?

A. Yes, correct.

Q. And so if there were any defects at all, the Consolidated Gas Company would have to take it up with the coal company?

A. That is right.

Q. And that responsibility was with the Consolidated Gas Company?

A. To take it up with the coal company?

Q. Yes,

A. Yes.

668 Q. Or if any faulty coal were furnished to the New York & Queens Gas Company?

A. Coal is not made up to order, sir, it is mined, it is the product of a mine.

Q. I know, but you stated here there was no indicated contract or agreement, nothing in writing to indicate the relationship between the New York & Queens Gas Company and the Consolidated Gas Company. I so understood it?

A. That is right.

Q. That is was simply an oral arrangement?

A. For the convenience of the New York & Queens Gas Co.

Q. And then when the coal was delivered to the docks of the New York & Queens Gas Company, the responsibility of the Consolidated Gas Company ended?

A. Yes.

Q. Except as to the coal being found faulty?

A. Correct, except that the New York & Queens Gas Company haven't got their own dock, it is delivered alongside Flushing.

Q. Well, when delivered to the Flushing dock, apart from any fault with the coal, why then the Consolidated Gas Company ended its responsibility?

A. That is right.

Mr. Tobin: That is all.

The Master: Do you wish to ask any questions, Mr. Neumann?

Mr. Neumann: Yes.

The Master: I notice you did not ask Mr. Gawtry anything about the future course of prices. Did you do that deliberately, Mr. Random, or didn't you want to bring that out by him?

669 Mr. Ransom: Well, Mr. Gawtry has been out of the coal business for—

The Master: Three months. Well, go ahead, Mr. Neumann.

Cross-examination.

By Mr. Neumann:

Q. Mr. Gawtry, you recall the winter of 1919?

A. I do.

Q. It was rather a long and severe winter; in fact, we had more snow than winter than we have had any year that you can remember, isn't that true?

A. Very well, sir, yes.

Q. You cannot recall any winter where the street cars in New York City stopped running for several days at a time by reason of the failure to remove the snow?

A. They were.

Q. The harbor around New York was pretty well frozen over, and so was Flushing Bay, wasn't it?

A. It was.

Q. Flushing Bay, as a matter of fact, freezes over almost every year, doesn't it?

A. Yes.

Q. Isn't there a difference in price, Mr. Gawtry, between coal purchased in the winter months and coal purchased in the summer months?

A. There is, if you buy by retail, but buying it as we do there is no difference in price; the price made April 1st runs through until the following April 1st, unless the Government steps in and changes it, as they did during the war.

Q. Well, have you any knowledge outside of your own Consolidated System, of large contracts for the purchase of coal? I am not talking of your own system, I know that your system
670 is April 1st of every year. I mean, have you any knowledge outside of your own system of the placing of large orders?

A. That is the practice of the anthracite industry throughout the country, it is not our practice at all, it is the whole anthracite industry.

Q. Well, how do you know that?

A. By twenty years' experience in buying anthracite.

Q. For the Consolidated system only?

A. Yes.

Q. You don't know it any other way?

A. Except that the coal people have told me that several of the railroads and others who use anthracite make the same contracts from April to April.

Q. How do you know that the railroads make the contracts in April?

A. I have been told by the coal operators.

Q. And that is how you know it?

A. Yes, sir. I have never bought for the railroads.

Q. Now, you mentioned that there were twenty different people that you obtained estimates from for coal. Will you mention some of them, if you can recall them, Mr. Gawtry?

A. Could I?

Q. Yes.

A. Yes. Lehigh & Wilkes-Barre Coal Company; Williams & Peters; Philadelphia & Reading Coal & Iron Company; D. L. & W. Coal Sales Company; Lehigh Valley Coal Company; Lehigh Coal & Navigation Company; Whitney & Kemmerer; Meeker & Co.; St. George Coal Company, and as many others as you please.

671 Q. Berwin & White?

A. No, they are bituminous operators.

Q. Did you mention Williams & Peters?

A. I did. The Consolidated bought from Williams & Peters.

Q. Now then—

The Master: What is your contention, Mr. Neumann, that the coal price was lower than Mr. Gawtry has testified to in 1919?

Mr. Neumann: Why, I think that I will be able to indicate, if I can lead up to it, that the trend was downward from the year prior thereto.

The Master: The years prior thereto?

Mr. Neumann: Yes.

The Master: No, I am talking now—Mr. Gawtry has testified that during the year 1919 certain prices had to be paid. Do you say the coal could have been bought for less than that?

Mr. Neumann: I don't know whether it could. I am trying to find that out.

The Master: Well, haven't you prepared your case for trial?

Mr. Neumann: Well, I have prepared a certain part of it.

The Master: Well, haven't you prepared on this branch of your case?

Mr. Neumann: I am trying to look over Mr. Gawtry's testimony this morning.

Q. Now, this contract, Exhibit 80, is an order for 100,000 tons of coal. That is a considerable portion more than the New York & Queens requirements, is it not?

A. It is.

672 Q. Well, what efforts did you make in behalf of the New York & Queens Company, solely and only?

A. I can buy 100,000 tons of coal cheaper than I can buy 5,000 tons.

The Master: That does not answer the question. You made no effort, did you, to buy 5,000 tons for the New York & Queens?

The Witness: Yes, sir.

The Master: Yes?

The Witness: No, I did not.

Q. You made no effort then at any time that you were making contracts for coal to make an individual contract on behalf of the New York & Queens?

A. I did not.

Q. Does this contract relate in any way to the quality of coal?

A. It does not.

Q. You have nothing in the contract with reference to quality?

A. We buy their coal and have used their coal for thirty or forty years, and we know it well.

Q. And you use it whether it is good, bad or indifferent?

A. You cannot buy coal specifying—you cannot buy anthracite coal specifying it should be such and such percentage of fixed carbon and such and such percentage of ash.

Q. You have to take it as it is?

A. You have to take it as it is.

Q. And is that the usual method, so far as you know, of purchasing coal?

A. It is; you select your coal and you have to stick to it. Some bituminous coal is bought otherwise, it is brought on the 673 B. T. U. basis, but that does not apply to this kind of coal.

Q. What did you find with reference to the coal that was delivered during the year 1919, as compared with prior years? Was it of a higher grade or a lower grade, or the same grade?

A. I do not think it was quite as good; I think the preparation was not quite as good; it was—the government and the whole nation was demanding coal, they turned out millions of tons more than ever before, and the shortage of labor, the quality of labor was not as good, and I do not think the preparation was as good in 1919 as in some other years. That applies to all coals.

Q. Do you know how the coal was delivered to the New York & Queens? Was it barge deliveries?

A. It was dumped from the railroad cars into boats, and the boats towed up.

Q. Where?

A. At Port Johnson, New Jersey, and Pier 18, Jersey City, both places; Port Johnson up to July 1st, and from July 1st on from Pier 18, Jersey City. It was then put in the boat and taken up the East River and Flushing Creek alongside of dock at Flushing.

Q. You are the same Mr. Gawtry who testified in the case of the Consolidated Gas Company against Newton and others?

A. Oh, yes, sir.

Q. Before this same Master?

A. I am.

Q. Do you recall what you testified as the price of coal in December, 1917?

Mr. Ransom: Objected to as immaterial, no connection with these present issues.

674 The Master: Objection sustained.

Mr. Neumann: Does the Master by that intend to rule that I may not show that prices were higher in prior years to 1919, and the tendency was downward?

The Master: Why, yes, I shall rule that the price in 1917 is not at all helpful in this case.

Mr. Neumann: Well, my questions would all be along the same line, and I think I have made a sufficient record that I won't waste any more time on it.

Mr. Ransom: I think he should ask his questions.

Mr. Neumann: You objected to it.

Mr. Ransom: I objected to the question now asked, yes.

The Master: I am not making any general ruling. Counsel has stated his view about it. You can ask Mr. Gawtry, if you like, what in his opinion is the trend since 1919, or what is his opinion as to what coal will sell for in the next two or three years.

Mr. Neumann: I think the way I wanted to bring it up is the proper way, because I have his testimony right here before me.

The Master: Well, I disagree with you.

Mr. Neumann: Sir?

The Master: I disagree with you in that, although Mr. Gawtry is anxious to answer.

The Witness: I would like very much to answer that.

Mr. Neumann: Well, I offer to prove by this line of testimony—

The Master: Well, you can't do it at this time. I will tell you what I will do—

675 Mr. Neumann: Yes.

The Master: Counsel for complainant having failed to do it, I will ask a couple of questions that will probably open the door for you to ask more.

Mr. Neumann: No, I object to it on the ground that it is incompetent, irrelevant and immaterial.

The Master: You don't know what I am going to do.

Mr. Neumann: May I have an exception?

Mr. Tobin: Exception.

The Master: I don't know what you are excepting to yet.

By the Master:

Q. Mr. Gawtry, you are in close touch with the coal market, or you were up to the time you left the Consolidated Gas Company on the first of March?

A. I was.

Mr. Neumann: I object to it as incompetent, irrelevant and immaterial.

Q. Since that time I understand you have been an official of the Bank for Savings?

A. Yes.

Q. The Bank for Savings is a very large investor in securities, isn't it?

A. Yes.

Q. And in your connection have you anything to do with general market conditions, prices, &c.?

A. A great deal.

Q. And in your connection are you necessarily in touch with business conditions?

A. I am.

676 Q. Prices of material and labor conditions?
A. Yes.

Q. And the ability of manufacturers to produce?

A. Yes.

Q. And everything that enters into production and costs?

A. Right.

Q. And the possibility of concerns making a profit, whose securities are owned by the bank?

A. Yes.

Q. Are you able to say what in your opinion was the indication when you were with the Consolidated in March, as to whether the price of coal would be higher or lower during the balance of the year 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, this witness is not competent to testify to that, and so far as it is concerned, it is a pure guess on his part.

The Master: Objection overruled.

Mr. Tobin: If the Master please, I do not think it is fair to attempt to bind the State by an answer that the witness might make here; that is, he is now entirely out of the coal business, he is in another line and he is not buying coal and he is not purchasing coal today.

The Master: Objection overruled.

Mr. Tobin: We take an exception.

Mr. Ransom: Your Honor's questions relate to anthracite coal?

The Master: Anthracite coal, just prior to the time he left.

677 The Witness: Anybody buying coal now is paying very much more than our contract prices, some places \$1.05 more.

Mr. Tobin: I ask that the answer be stricken out.

The Master: The answer was not directly responsive. I asked you what in your opinion was the indication about the first of March, when you left the Consolidated Gas Company.

Mr. Neumann: How about the motion to strike out?

The Master: I will let it stand a minute, because it is bound to come in anyhow.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. (continuing): I asked you what in your opinion was the indication about the first of March, when you left the Gas Company, as to the probability, what the probability was of buying coal cheaper or dearer, when you left the Gas Company.

A. During the month of February, the end of February, I talked to as many people as I could reach, and the general impression was, and my impression was that coal would be very much higher this year; they had not then given the increase in wages to their employees which the bituminous people have now given, and which the anthracite people will have to give, they are now in negotiation.

Q. When you left the Gas Company on or about the first of March, what were the indications as to any reasonable length of time, a

year or two or three, as to what in your opinion would be the course of the coal prices, anthracite coal?

678 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, the witness not properly qualified.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Witness: I think it will be higher for three years to come.

Q. For at least three years to come?

A. Yes, because the arrangements with the laborers, with the unions are made for a period of three years, ordinarily.

Mr. Tobin: I ask that that answer be stricken out, it is pure speculation, he hasn't shown any qualification to testify.

The Master: Overruled.

Q. Now, you said something before which was not directly responsive to my question as to the prices now being paid. On what did you base that statement?

A. On the prices I have heard that coal is sold for now.

Q. Well, heard how?

A. What the Consolidated is paying.

Mr. Tobin: If the Master please, that is entirely hearsay, that answer should not be allowed.

The Master: I am going to find out whether it is hearsay.

Mr. Tobin: Well, we object to the Master asking these questions.

Q. What information have you?

A. Because I was told so.

679 The Master: I shall strike out all the witness' testimony as to what is now being paid for coal, and I shall let the witness' testimony stand as to what the indications were to him less than three months ago, when he left the Consolidated Gas Company, and was in close touch with the situation.

Mr. Neumann: I except.

The Master: Now, if Mr. Neumann wants to cross-examine Mr. Gawtry as to the trend of prices and go back to 1917, I will let him.

Mr. Ransom: The complainant excepts to the striking out of the witness' statement.

Cross-examination.

By Mr. Neumann:

The Master: I shall say now that unless testimony is offered to contradict Mr. Gawtry, that I shall rely upon his sworn statement as to the indications and his opinion as of the first of March, less than three months ago.

Mr. Cummings: As to the future?

The Master: As to the trend being not less than it was when he left in the end of February.

Mr. Cummings: Had you better let him speculate on that?

The Master: No, I am taking his opinion as a matter of experience, and if there is any man you know of that has had equal experience, I am going to let him testify in contradiction to what Mr. Gawtry says.

Q. Now, Mr. Gawtry, within the last few months there have been strikes at the coal mines, have there not?

Mr. Ransom: I object to the question unless limited to anthracite.

The Master: Objection overruled.

680 A. Not that I know of.

Q. Well, for how far a period back do you recall a strike at the mines.

A. Anthracite mines, you refer to?

Q. Yes.

A. Some period, there has been a cessation of work.

Q. Well, there has been a cessation of work only—

A. (Interrupting.) Prior to the 1st of April.

Q. Prior to April 1, 1920?

A. Right.

Q. How far back did that run?

A. Just about the 1st of April, that is when their agreement ran out, the last day or so, about the end of March they ceased and did not work in the early part of April and the last few days at the end of March and the 1st of April.

Q. Are they working now?

A. To a certain extent.

Q. But not to their capacity?

A. No.

Q. At the present time there is considerable railroad congestion, is there not?

A. Yes.

Q. You read the announcement about the railroads asking the Government to take control again and issue priority orders?

A. I have.

Q. And both of those conditions would tend to affect the price of coal, wouldn't they?

A. They would.

Q. Do you recall testifying in the Consolidated Gas case, do you recall this question and this answer, "That is as of December 1, 1907, alongside price per gross ton was \$6.62?"

681 Mr. Ransom: 1907 or 1917?

Q. (Continuing:) "A. December 1, 1918, not December 1, 1917." Is that correct?

A. I do not quite follow that, sir; which page?

Q. Right here (indicating).

Mr. Ransom: From what page of the Consolidated record are you reading these fragmentary questions and answers?

Mr. Neumann: 3388.

The Master: The question is, is that correct?

A. I cannot say from memory. I presume, I take it for granted that it is.

Q. I have just shown you the book, and you have looked it over, have you not?

A. Yes, I take it for granted that is correct. Here we are dealing with prices at the mines, and this is the alongside price. I would have to find out the railroad fare at that time, and the water freight.

Q. Did you give the alongside price in this case, the present case that you are testifying in, Mr. Gawtry?

A. I did.

Q. What did you figure that as?

A. January, February and March, 1919, \$8.495; April, May and June, \$8.395; July to December 31st, \$8.445.

Q. That of course was the alongside price to all the Consolidated Companies?

A. That varies at different stations. That is the alongside price at Flushing, New York. That is what I am testifying to here now.

Q. And the difference in the alongside price between the various stations is accounted for by the towing charge?

A. It is.

682 Q. And what other charge?

A. The towing charge.

Q. That is the only one?

A. The tax is figured at 3 per cent on the amount of freight that you pay, both water freight and railroad freight. The towing charge during that period was 45 cents within towing limits, and 60 cents to Flushing. The tax would vary as to 3 per cent on 45 cents and on 60 cents.

Q. Otherwise it would be the same all over?

A. Yes, sir.

Q. Mr. Gawtry, did I understand your testimony to be that you had nothing to do with the deliveries at all at the New York & Queens, that that was solely under the control of Mr. Spear?

A. Just what do you mean by deliveries?

Q. Did you direct when, at what times and in what quantities deliveries should be made to the New York & Queens Gas Company?

A. Mr. Spear would call up the Consolidated Gas Company and say, "We need a cargo of coal, our stock is running low." Mr. Francklyn, who had charge of distribution of the 10 or 15 boats a day, would send a cargo up there as soon as he could. I didn't do it personally.

Q. It would be fair to say that Mr. Spear was the one who was in direction of when the coal should be delivered?

A. Absolutely.

Q. That is what you say?

A. Yes, sir, that is so.

Q. Mr. Gawtry, so far as you know, there is no contract existing between the New York & Queens Company and any coal company

for the supply of anthracite coal for the period covered by
683 Exhibit No. 80?

A. There is not.

By Mr. Tobin:

Q. You left the Consolidated Gas Company on March 1, 1920?
A. That is right.

Q. Can you state about what date was the last contract made by
you, or last change in contract made by you for the Consolidated
Gas Company and the companies that you were buying coal for, as a
part of the Consolidated Gas Company's contract?

A. You are referring to anthracite?

Q. Anthracite? Yes, sir.

A. April, 1919.

Q. So that was the last contract you negotiated for the New York
& Queens Gas Company, which was receiving its supply through the
Consolidated Gas Company?

A. Yes, sir.

Mr. Tobin: I don't know whether the Master will permit this or
not, but I would like to inquire from him as to whether Mr. Gawtry
sat in or was a part of the arrangement made by the Government in
the fixing of the price of coal?

The Master: You can ask him that.

Q. As you have stated, you purchased various supplies of coal
during the period of the war. Were you called to Washington at
any time to sit in with the Fuel Administration as to the price of
coal to be charged?

A. I was called to Washington several times and sat with the Fuel
Administration people, but not on the price; merely on de-
684 liveries?

Q. Merely on deliveries?

A. Shortage and distribution, and ways of delivering.

Q. But you were not a member of any board which had to do with
the price of coal?

A. Never.

Q. Did you inquire into or make an analysis as to how the price
was arrived at which the Government charged? You have stated
here, I think, that the Government had fixed a price for the first
quarter of the coal year, April, 1919, of \$5.95—am I not right?

A. Yes, sir.

Q. Did you make an analysis at all as to how that price was ar-
rived at?

A. I did not make analysis; Mr. Garfield did that.

Q. Did you inquire at Washington, or inquire of the board which
sat in Washington who fixed that price, as to how it was arrived at?

A. I know how it was done, but merely by hearsay.

Q. What I am getting at is whether you made any protest what-
ever as against that price?

A. We did not.

Q. On behalf of the company of which you were an officer?

A. We did not.

Q. You made no protest?

A. No, sir.

Q. You simply accepted the price as fixed by the Government?

A. Yes, sir.

Q. And you don't know how that was done?

A. Merely by hearsay. Mr. Garfield sent his accountants 685 to the coal companies and got their costs, and he heard the labor people, and fixed the price.

Q. But you have no positive knowledge of how it was done?

A. No, sir.

Q. And the Consolidated Gas Company made no objection to the price as fixed by the Fuel Administrator?

A. It did not.

Q. Did you make any contract for the New York Mutual Gas Light Company for anthracite coal?

A. What year?

Q. For the coal year 1919?

A. Yes, I have always consulted with them. When Mr. Gallo-way was alive I always consulted with him, and Mr. Parkhurst, I always consulted with him.

Q. What I would like to have you answer is whether you made contract for that company?

A. I did not.

Q. You stated this morning that where it was found by Mr. Spear that the coal was not up to the requirements, that is was not of the quality good for making gas, that he reported to you. Can you tell the Master what procedure you followed, that is what you did about that when Mr. Spear reported to you that the coal was not proper gas making coal, was not sufficient in the qualities necessary for making gas—what did you do then?

A. I would ordinarily take it up with the coal companies, they would send an inspector down—

Q. Tell us exactly what you did do?

A. I would have an analysis of every cargo of coal that is used—

686 Q. Who makes that analysis?

A. The chemists. If we found that the coal was not well prepared we would take it up with the coal company and ask them to inspect it. They might say our sample was not good, and might take other samples, and we would object and they would say the coal was not made by them, they gave us the best they could, etc. Anthracite coal has been running fairly well. Bituminous we had some trouble with.

Q. What rebate has been allowed to the Consolidated Gas Company because of the failure of the coal company to furnish the quality of coal which was called for in the contract?

A. I don't remember any rebate.

Q. That is, you cannot recall any moneys being paid back to the Consolidated Gas Company?

A. Not one cent.

Q. For poor coal, at least coal that was not sufficient in quality?

A. No.

Q. Well, taking the New York & Queens Gas Company, can you tell us of any rebates that were paid back to the Consolidated Gas Company for the benefit of the New York & Queens Gas Company because of the failure of the coal companies to deliver coal of a proper quality?

A. I cannot. I don't remember any complaints from Mr. Spear about the quality of the coal. I did not take up any question of the quality of his coal.

Q. You indicated that Mr. Spear at different times had complained?

A. No, I said that would be the procedure if the coal had not been up to the standard, but I don't remember any complaint.

687 Q. Then I misunderstood you. I understood you to say he had complained?

A. No, I don't remember that he ever did.

Q. So your testimony is that you don't remember Mr. Spear complaining at any time?

A. As to anthracite I do not.

Q. How long a period of time would you say that would cover?

A. Five or six or seven years.

Q. And no rebates have been paid back for poor coal?

A. Absolutely not.

Q. Have any adjustments or allowances been made at all for the benefit of the New York & Queens Gas Company covering the period of 1919, 1918?

A. None.

Q. None whatever?

A. No.

Q. So that the price fixed in the contract is the price that the New York & Queens was called upon to pay?

A. It is.

Q. And there has been no change whatsoever as to those terms?

A. Absolutely none.

Mr. Tobin: I don't like to prolong this testimony, but Mr. Gaway indicted that there was the possibility of protesting, and of protests being made because of poor quality. If it was of no avail then there would be no purpose of making the protest.

Q. Has the Consolidated Gas Company on behalf of any of its companies, or on behalf of its own company, gained anything by those protests?

688 A. Merely demanding and asking for better preparation of the coal. We have frequently done that in my experience.

The Master: Does that avail you very much?

The Witness: Not very much, excepting asking for better quality.

The Master: Do they do any better?

The Witness: I think they do. We test every single cargo of coal

that comes to us. Most people put it in their boilers and let it go. We tear apart those ingredients on every ton of coal, and we are very particular. I think because the coal companies know we are particular we get better coal and better service.

The Master: But you don't get any rebates?

The Witness: No. Coal is not made to order. Coal comes from the ground ready made.

Q. Has it not at any time been so poor in quality that you deemed it advisable to turn to some other coal company to purchase coal?

A. Not with anthracite. I have with bituminous but not with anthracite.

Q. You only buy anthracite coal?

A. That is practically all the Queens Company uses. I have bought large quantities of bituminous coal for the Consolidated Company.

Q. So there was no complaint sufficient at any time to make it necessary for you to turn to some other companies to buy anthracite coal?

A. No.

689 (The following are copies of Complainant's Exhibits 80 and 81 referred to in Mr. Gawtry's testimony.)

COMPLAINANT'S EXHIBIT NO. 80.

Lehigh and Wilkes Barre Coal Company, 143 Liberty St.

New York, April 17, 1919.

Mr. L. B. Gawtry, Vice President,
Consolidated Gas Company,
4 Irving Place, New York City.

DEAR SIR:

We have entered your order for 100,000 tons of Broken coal, equal monthly shipments, for delivery during the coal year April 1, 1919, to March 31, 1920. The price of this coal is \$5.85 per gross ton at the mines. The rate of freight now in force is \$1.85 per ton from the mines to Port Johnston, making the price f. o. b. \$7.70 per gross ton. Should there be any increase or decrease in said freight rate, the price f. o. b. Port Johnston will be adjusted to correspond with such increase or decrease.

This sale is subject to the usual strike clause or any interference with operation or transportation beyond our control, and the price is subject to the Government tax of 3% on the railroad freight.

Yours truly,

P. B. HEILNER,
U. P. & G. A.

554 C. D. NEWTON ET AL. VS. N. Y. & QUEENS GAS CO.

690 (Attached to foregoing:)

April 18th, 1919.

Mr. P. B. Heilner, Vice-President,
Lehigh & Wilkesbarre Coal Company,
143 Liberty Street,
New York.

MY DEAR SIR:

I beg to acknowledge receipt of your letter of the 17th instant, the terms of which are satisfactory and as agreed between us.

Very truly yours,

L. B. G.

COMPLAINANT'S EXHIBIT NO. 81.

Lehigh and Wilkes Barre Coal Company, 143 Liberty St.

New York, June 27, 1919.

Mr. Lewis Gawtry, Vice President,
Consolidated Gas Company,
3 Irving Place,
New York City.

DEAR SIR:

On July 1st, 1919, we will leave Port Johnston as a shipping dock and move to Pier No. 18, Jersey City, N. J., a new modern up to date shipping plant.

As our rail transportation is 5c. per ton more to Jersey City than to Port Johnston, we will bill our coal at 5c. a ton more at the new dock than we ask at Port Johnston.

691 The water freight should be 5c. per ton less from Jersey City than it is now from Port Johnston, but I can not say at this writing what the towing rate will be.

Yours truly,

P. B. HEILNER,
L. B. G.

Mr. Ransom: I offer in evidence Complainant's Exhibit 66 for Identification.

Mr. Neumann: In the first place I should like to protest against this method of introducing exhibits. They are introduced in all parts of the record without any continuity. It is difficult to find them after they get in there, we have got to wade all through testimony to determine where an exhibit is offered and where not offered.

The Master: Why did I hold that back?

Mr. Ransom: Because of the situation with respect to—I don't know, I suspected that it was on account of the situation with respect to mains, that the main books were not in evidence. Personally I did not think there was any valid reason at that time for holding it back. Subsequently of course we proved the main records and they are now in evidence.

The Master: Is there anything else?

Mr. Neumann: What is this?

Mr. Ransom: Miller's appraisal.

Mr. Neumann: It is objected to on the ground it is immaterial, irrelevant and incompetent. It is based on data not properly proven. It is based on hearsay. It is based on statements made by other persons. It is also based, as the witness 692 Miller's testimony will show, on records that do not indicate that they are properly kept, because the witness stated himself there were certain gaps, and he showed how he attempted to fill those gaps.

So far as the mains, meters and services are concerned, there is no competent or valid evidence on this record as to them at the present time.

It is secondary evidence and hearsay, if the Court please, and I think I can refer you to the question that I have in mind with reference to the speculation and guess as to the meters and services. I refer particularly to the answer given on printed page 176 of the record, folios 528, 529, 530 and 531.

I take it that your Honor is familiar with Judge Greenbaum's criticism of this witness and his testimony, particularly that part where he intended to testify as to mains, services and meters, the criticism which Judge Greenbaum made as to the taking of such testimony.

The Master: I am trying this case. Judge Greenbaum tried another case.

Mr. Neumann: I understand that and appreciate it.

The Master: I understand that the witness Miller undertakes to testify as to reproduction cost of this Gas Company's plant and distribution system. Is that right?

Mr. Ransom: That is correct.

The Master: I think that I have already put on the record the statement that I am not in accord with counsel's view that 693 the reproduction cost at this time is any basis upon which I shall find the value.

Mr. Ransom: That view has been stated at great length upon this record. Complainant has great respect for your Honor's view in that regard but feels under the necessity of offering proof of present reproduction costs.

Mr. Tobin: I wish to object first on the ground that there has been no proof as to the ownership of this property; second, there is no proof of the extent of the property or the condition of the property; third, there has been no appraisal made whatever of what is known as the plant and distribution system acquired by the company on August 1, 1904, and that there has been no appraisal or inventory or detail whatsoever of what is entitled as preliminary organization and development expenses, cost of financing, interest and taxes during construction; administrative, legal and miscellaneous general contractors' expenses and profits, co-ordination of service in consolidation of companies—

Mr. Ransom: May I just interrupt? Mr. Tobin is now reading a document which is not being offered. We are not offering—

Mr. Tobin: I understand that.

Mr. Ransom: We are not offering the tabulation which you are reading. There is no such thing in the document which we are offering.

Mr. Tobin: Yes, but the items I am reading are in this document that you are attempting to offer.

Mr. Ransom: You are reading from a tabulation showing the original cost of this property to the company. I am not now offering the tabulation of original cost. The tabulation of original cost was furnished in pursuance of the direction of Judge Mayer and of the Master. What I am now offering is Mr. Miller's tabulation of the present reproduction cost.

Mr. Tobin: I wish the Judge would not interrupt me. I am endeavoring to say that there was no appraisal or complete inventory made as to these particular items, because it will be shown at another time that the record is very vague, and also as to any inclusion of franchise rights, which run to a large extent, there is no proof whatever.

The Master: I will overrule the objection.

Mr. Neumann: I want to make one other objection to some specific pages there irrespective of whether the exhibit goes into evidence, pages 2 to 14 should not go in evidence by reason of the fact that they contain a lot of matter that the witness should be questioned on question by question, and not put in this general form.

The Master: I do not believe it can do any harm to take it in this way. There is really no distinction drawn between the pages specified by Mr. Neumann and the other pages of the exhibit. This is intended to be a short way of putting in the testimony of Mr. Miller. I said on the occasion when this matter was under discussion, apropos of the matter now being discussed, that I should entertain motion to strike out any part of the testimony as if the witness had testified to it orally in answer to questions. I think that on the whole it is the best way to take a long statement by the witness. I think it worked very well in the Consolidated case, and we have it all 695 in concrete form on the record, and we haven't got a jury here, and the Court will disregard such matter as is not properly proved.

Mr. Tobin: I wish to say this, that there is no proof before you as to the ownership of this property; there is no proof of the extent of the property or the condition of the property; and also there is no proof as to any vouchers for a large part of what is attempted to be proved through this particular exhibit that is now handed to you.

The Master: I will take the exhibit, Mr. Tobin.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

The Master: I take it not as an exhibit but as the testimony of the witness on which he is to be cross-examined.

Mr. Neumann: According to your Honor's ruling, reproduction cost is clearly immaterial.

The Master: That may be, but, as I stated before, I am going to

take it. I expressed my views rather fully at page 190 of the printed record.

Mr. Neumann: There is this that I would like to call your Honor's attention to that now occurs to me, that you did say that you would not take this exhibit when originally offered for identification by reason of the fact that there were certain things that were not yet proven or that were not in evidence.

The Master: I said at page 191, "You had better hold the offer of that Exhibit 66, for identification in evidence, back for a while."

I do not recall exactly what I had in mind at that time.

696 Mr. Tobin: You had in mind that there had been no proof as to the ownership or condition of this property whatever.

The Master: No.

Mr. Neumann: It was with reference to mains, meters and services, that there was no proof about that. I don't know that they have offered any proof since that time covering those subjects.

The Master: I think there is enough now. I will take it.

Mr. Ransom: May I ask whether these notes there, the details of certain items in the summary, comprising pages 2 to 14, whether that shall be copied into the record as Mr. Miller's testimony on those matters, or whether they shall remain as a part of the exhibit?

The Master: That whole document is taken in as Col. Miller's testimony.

Mr. Ransom: And will all be copied into the record?

The Master: All copied into the record.

Mr. Tobin: With this understanding, that you said we might attack any part of that upon cross-examination.

The Master: Yes. I am taking Exhibit 66, for Identification, as the direct testimony of Mr. Miller as if he were asked questions and gave the answers stated by him in this document.

Mr. Neumann: You are taking it in this form to save time?

The Master: Yes.

Mr. Tobin: Perhaps you have some idea of your own about it, but I venture to say that I don't know how we are going to get at the particular facts necessary as to the extent of the property of 697 this company or the condition of the property or the ownership of this property. We are handed this book as an appraisal. We don't know whether the stuff belongs to the New York & Queens Company or whether it belongs to the Consolidated Gas Company.

Mr. Neumann: Take for instance on any of these pages that you want to look at, one question will cover three or four pages. Some of it would be mighty difficult to cross-examine the witness on by reason of the fact of the way that it is put in.

The Master: I will take it.

Mr. Neumann: May we have an exception?

The Master: Yes.

Mr. Tobin: To the entire exhibit?

The Master: Yes.

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Mr. Neumann: And also to the denial of the motion to omit pages 2 to 14?

The Master: Yes.

Mr. Ransom: It is understood that the entire contents of this Exhibit 66, for Identification, will be spread upon the record with the same force and effect as though it were Col. Miller's direct testimony?

Mr. Tobin: We do not like to have it put just that way. We are ready to follow what the Master dictated, but we are not going to take it just as counsel cares to have it put in.

The Master: I don't understand that there is any change.

Mr. Tobin: Except that you tied it up with this restriction, that it was subject to cross-examination the same as if the witness was on the stand.

698 The Master: Certainly. I am taking it as the testimony of Mr. Miller. I asked him when he was on the stand whether, if interrogated particularly as to the matters spread in this paper he would give the answers stated in this paper, and he said he would. I did that for the purpose of laying a foundation for a charge of perjury if he perjured himself. That is the important thing, not to have things in the record that he will not be responsible for under oath. Instead of having him read all the statement into the record, he has sworn to every word that is set forth in it, as if he had repeated every word of it. I am taking it to that extent, subject to cross-examination and motions to strike out.

Mr. Neumann: And that deprives the defendants of their constitutional right to object to each question as framed.

The Master: What section of the Constitution and which constitution?

Mr. Neumann: Well, due process of law.

Mr. Tobin: We object to the form in which it is presented.

Mr. Neumann: I think if anything it should be introduced as an exhibit rather than as testimony.

The Master: I have made my ruling.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

(The statement referred to is as follows:)

699 COMPLAINANT'S EXHIBIT 66 FOR IDENTIFICATION.

*Inventory of the Plant and Distribution System of the New York
and Queens Gas Company as of January 1st, 1920.*

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Summary.

Cost to Reproduce New York & Queens Gas Company.

January 1, 1920.

(References in parentheses are to account numbers in the Uniform System of Accounts as prescribed for Gas Corporations by the Public Service Commission for the First District.)

(I) Land (G110)	\$55,000.00
(II) Buildings and Apparatus (G121, G122a and c, 221, 222, G141a and b, G143b, G145, G143a, 224 and 225)	505,960.00
(III) Street Mains (231)	1,071,139.00
(IV) Services (232)	175,563.00
(V) Meters (233 and 234)	174,163.00
(VI) Gas Appliances (236)	85,427.00
(VII) Arc Lamps (239)	3,173.00
(VIII) Tools and Implements (237)	1,002.00
(IX) Laboratory Equipment (238)	2,449.00
(X) Office Furniture and Fixtures (G122a)	6,023.00
(XI) Stable Equipment (G122d)	5,424.00
(XII) Omissions and Contingencies	25,295.00
(XIII) Organization and Development prior to Construction (101 and G102)	135,000.00
(XIV) Cost of Financing	150,000.00
(XV) Engineering, Superintendence and Gen- eral Contractor's Expense and Profit (G281)	200,000.00
(XVI) Interest during Construction (G285) ..	101,096.00
(XVII) Taxes on land during Construction (G284)	345.00
(XVIII) Administrative, Legal and Misc. General Expense during Construction, G282, G283 & G286)	45,000.00
(XIX) Working Capital	165,000.00
Total	\$2,907,062.00

There are certain expenditures incident to the construction of a gas plant and system, all of which were made to some degree in constructing this property, under the costs and conditions from time to time prevailing, and all of which would have to be made under present costs and conditions, to the extent now shown in reproducing this property as of the present time, and yet which cannot be accurately apportioned among the various inventoried items. These elements of unavoidable expenditure include:

- (1) Omissions and Contingencies;
- (2) Organization and Development Prior to Construction;
- (3) Cost of Financing;
- (4) Engineering and Superintendence or General Contractor's Expense and Profit;
- (5) Interest During Construction;
- (6) Taxes During Construction; and
- (7) Administration, Legal and Miscellaneous General Expense.

In preparing this inventory and appraisal of reproduction cost, I have considered separately what would probably be the expenditures for such of the several services named, taking into account all the available facts bearing on the conditions and cost of reproducing this plant and system.

In working out such an estimate of required outlays, I have taken the construction period as beginning when the sponsors or promoters of the project have secured the agreement of bankers to supply necessary funds.

It is my estimate that the period of the construction of the plant and system of this company might be confined to one year, and I have made my calculations of structural overhead costs on a one-year basis. Under present conditions, such an estimate as to time is extremely conservative, and I doubt if in fact the whole system would be completed and brought to good operating condition in twelve months.

503 Omissions and Contingencies:

In estimating the cost of reproducing a gas manufacturing plant and appurtenant structures and equipment, allowance has to be made, as a practical matter, for omissions and contingencies, covering the following:

(1) There is always a portion or percentage of the small units or items of machinery, tools, implements and other property which are invariably overlooked in the inventory, and their reproduction has to be provided for, nevertheless, in any present estimate.

(2) Small units of material, mechanism, and supplies are lost or destroyed during construction. As to many items of materials and supplies, a larger quantity has to be delivered and paid for than could ever be checked up now in the completed structures and equipment.

(3) Other contingencies arise; for example, strikes or labor difficulties, interruption or delaying of work from adverse weather, delay in shipments, or other conditions, unforeseen extra work, factors affecting the suitability or availability for use of materials, supplies,

machinery, parts, etc., as needed, and the like. Expense arises in all such connections, for which advance provision has to be made in estimating cost to reproduce as of to-day.

Every contractor, builder, vendor of machinery, and every business man of experience knows that this item covering omissions from inventory, loss of small units during construction, unforeseen contingencies arising during construction, etc., is an actual factor, for which a practical provision must be made.

As to buildings and structures, I have shown the items for omissions and contingencies in conjunction with each building and structure and have brought these items together in the summary.

The sum of \$25,298.00, which I have estimated as necessary for this item as to this company, amounts to about five per cent. 704 on the cost of reproducing the buildings, apparatus, equipment, etc., exclusive of the distributing system.

Organization and Development Expenses Prior to Construction (P. S. C. Accounts 101 and 6102):

This item covers the services and expenses necessary in the organization and development of the company from the time of the inception of the project to the time when the charter, franchises, local consents, permits, etc., have been procured, an agreement obtained for the furnishing of the requisite capital, and the project brought to a point where construction can be commenced.

The costs comprised under this heading cover the compensation, on a reasonable salary basis, for the services of the sponsors; the salaries of stenographers, clerks and other assistants; general expenses, such as rent and traveling expenses; the preparation and circulation of prospectuses and preliminary advertising; the expenses for obtaining the charter, including incorporation fee and the payment of the State on capital stock; expenses in connection with obtaining ordinances, franchises, permits and local consents, the cost of the many aspects of legal and engineering advice that is pre-requisite; other technical expenses; interest on expenditures incurred during this period, etc.

From the whole situation with respect to this company, I am of the opinion that a reasonable cost for organization and development prior to construction is \$135,000.00 and that these expenses could not be met, as of the present time, with a small outlay.

Cost of Financing:

Taking into account the nature and status of this gas enterprise and the amount of securities necessary to be marketed to reproduce it, I am of the opinion that there is an additional element of cost, separate and distinct from bond discount, which has to be taken into account and considered as a cost for necessary service, and just 705 as much a part of the cost of reproduction of property as engineering or legal expenses.

The expense of assembling the necessary capital is ordinarily re-

flected in the difference between the actual sale price of the securities to the ultimate investors, and what the company itself realizes from such securities. One element in this difference represents the reasonable compensation for bankers' services in marketing the securities and forwarding the funds yielded. It covers individual and corporate expenses, and the expenses of examination, negotiation, advertising and selling through all the various stages until the sale to the ultimate investor is accomplished. Such an expense would be incurred even if the utility company dispensed with bankers and marketed its securities through its own salesmen and agents. In fact, this latter method undoubtedly would require more time, and cost more, than if recourse were had to an existing banking house with an established reputation and clientele.

Another element in the cost of financing arises out of the underwriting, under the conditions of hazard as to the launching of such an enterprise in such a community at this time. These two elements of necessary expense, comprehending the cost of the organization furnishing financing services to the company, seem to me to be in the same class with the cost of services furnished by the engineering, legal and administrating organization of the company, and therefore to constitute a part of the cost of reproduction. Every person who has had an active part in the flotation of a construction enterprise in the public utility field in recent years, knows that this element of cost is a very substantial factor and that the allowance of \$150,000.00 which I have made, representing approximately six per cent on the project, is substantially below the figures for which this service could, in any probability, be procured under present conditions.

Engineering, Superintendence and General Contractor's Expense and Profit (G281):

Engineering work and superintendence during construction call for a kind of experience not generally possessed by the operating engineers connected with gas companies. In the case of 706 this company there is every reason to suppose that it would be cheaper to secure the services of special constructing engineers than to undertake the work with a force headed by an operating engineer who would later have charge of the engineering end of the company's activities. The construction of the plant and laying of the mains can be done to greater advantage by a general contractor having both the organization and the construction plant necessary to complete the work in the least time and at a minimum cost. If the utility company organizes a construction department and buys the construction plant, the chances of saving anything in cost are slight, and on the other hand, the chances of material increase in cost due to the risk of working with a new and uncoordinated staff are very great. Almost every investor has knowledge of cases where enterprises have cost far more than the amount of the original estimates due either to those estimates having been improperly made by careless or incompetent engineers or to the placing of the construction work in the hands of company employes, or contractors

not qualified to handle it. The chance of the utility finding a man able and ready to organize a construction force and to assemble at a reasonable expense a construction plant is small, in fact the chances are all against the utility in this respect and a wise management would save money by putting the work into the hands of Engineers and contractors regularly organized for this class of work.

The work under this heading includes location surveys, general and detailed designs and drawings, preparation of specifications, providing a construction plant, securing and tabulating bids from sub-contractors and placing orders for buildings and apparatus, ordering and assembling material not included in sub-contractors' estimates and placing and erecting this material, checking material and sub-contractors' work and paying for same, coordinating the work of the sub-contractors and of the general contractor and taking all necessary

steps to secure the delivery of the required materials and
707 parts of apparatus or buildings in such time and in such
order as to insure the completion of each part of the plant
and of the entire plant in the allotted time and to reduce as much
as possible the delays due to lack of prompt delivery of materials and
mutual interference of the various working forces.

It would require at least \$200,000 to cover this cost at the present time.

Administrative, Legal, and Miscellaneous General Expense (P. S. C G282 & G286)

Included in this category are the salaries and expenses of executive and general officers, auditor, bookkeepers, timekeepers, inspectors, and other employees of the company; the rent and expenses of the general office, insurance during construction, legal and court expenses including the printing of briefs, legal forms, testimony, reports, etc.; payment to referees or arbitrators for the settlement of disputed questions; cost of suits for other causes than injuries to persons, and payment of special fees, witness fees, etc.; the expenses of the taking of depositions; also all construction and equipment items of a special and incidental nature not provided for under any other heading in this inventory.

During the construction period the administrative officers and legal department must look after many details. Bookkeeping, auditing, and paymasters' departments must be organized to care for and account for the funds. Timekeepers and inspectors must check the delivery and quality of materials and the amount and progress of the work so that the contractor may be paid from time to time without danger of being overpaid. The development of satisfactory public relations require the attention of the general officers and as far as possible of everybody in the organization during this period. Negotiations and formalities incident to the issuance of securities have to be undertaken and completed. Permits from the municipal departments for opening the streets must be secured and questions relating thereto frequently require the attention of the higher
708 officials of the Company. The general officers should examine the bids from sub-contractors, advise as to the letting

of sub-contracts and keep themselves informed regarding the status of the sub-contracts until the work covered by them is completed and the bills paid. During this same period an operating organization should be perfected and plans made for securing the business as rapidly as possible after the plant is put in operation.

These services and expenses of the administrative officers and legal staff, and the miscellaneous general expenses, continue during the entire construction period.

For this item, my estimate of the present required expenditure aggregates \$45,000.

Interest During Construction (P. S. Account G285):

Included in this category is the interest accruing upon the moneys (and credits available upon demand) acquired for use in connection with the construction and equipment of the property from the time of such acquisition until the construction is ready for use. This item also covers reasonable charges for interest during the construction period on the company's own funds used for construction purposes during such periods. Interest receivable accruing upon such moneys is taken into account as a credit, as are also such discounts as may be realized through the prompt payment of bills for materials and supplies used in construction, where such discounts have not been credited to the particular bills.

For the computation of interest during construction, the period of construction is defined to begin with the agreement of bankers to supply the funds necessary for construction, and to end when its operation begins.

It is estimated that the property would go into operation twelve months after the beginning of construction. All of the land would have to be purchased before beginning construction, and interest upon it should be figured for the year. An interest rate of 709 eight per cent is taken as required for the obtaining of the requisite new capital by a gas making company in this territory. As to cost of buildings, and apparatus and street mains, and the cost of engineering, superintendence, administrative and legal service, and miscellaneous general expense, interest should be calculated for half a year at the 8% rate. There is also to be included interest at 8% during the one year construction period on the organization and development expenses prior to the beginning of construction.

The proper provision for interest during construction is in my judgment \$18,600.00.

Taxes During Construction (P. S. C. Account G284):

Included in this category are the various taxes and assessments levied by public authority and payable on property belonging to the corporation during the period of construction and before the plant is opened for commercial operation. Taxes incident to operation only are not included, nor are the special taxes assessed for street and other improvements, such as grading, paving, sidewalks,

guttering, etc., which are chargeable to the account to which is charged the particular property benefited.

Taking into account the period elapsing between a given construction expenditure and the first payment of taxes thereon, it is deemed proper to include taxes on land for a period of twelve months, at the 1920 rate and assessed valuation, and no taxes at all on construction expenditure.

On this basis, the required provision for taxes during construction is \$345.

Working Capital (Uniform System of Accounts, Paragraph 25)

Working Capital may be defined as the total floating or mobile capital required in addition to the fixed capital. It may be in the form of cash requirements (called "current assets" under the Uniform System of Accounts) or in the form of materials and supplies

(P. S. C. Account G 10). For the efficient and economical carrying on of the multitudinous transactions of daily operation, money has to be put into things which are not reflected in the fixed capital accounts as of any particular date of inventory, and a reservoir of cash has to be kept on hand, so as to handle current transactions promptly and economically. These elements of outlay and investment—representing property and assets actually and necessarily used in carrying on of the gas business—are grouped together as "working capital," to the end that they may be included in the property and investment upon which a rate yielding a fair return is to be computed.

The Uniform System of Accounts for Gas Corporations (Parag. 31) defines the capital of a gas corporation to be and mean all property devoted to the rendering of the services or the production of the commodities which are within the purposes of the corporation. Capital other than "fixed capital" is called "floating capital" (Parag. 5), and "floating capital" is divided into two major groups (Parag. 25) "Materials and Supplies" and "Current Assets." Current Assets are defined (Parag. 26) to mean "cash," "accounts receivable," "bills receivable," etc. Working capital may perhaps best be considered in relation to these two elements separately.

The first element covers general stores and supplies (P. S. C. Account G10)). It covers the cost, including transportation, of all materials and supplies acquired by the company for its gas operations.

The second element covers the funds necessary to meet payments incidental to the ordinary conduct of the business, for the prompt payment of bills in order to procure trade discounts, for advance payments which good business judgment makes necessary or desirable, and for the purchase of materials, advantageously, as to price, quantity and time. It also covers the moneys or floating assets into which the mobile capital of the company has gone, not yet reflected in fixed capital accounts or operating revenues. In this latter category are (1) accounts receivable, representing our

lays for which moneys are due the company and have been
 11 billed to consumers, purchasers and appliances and other
 debtors; and (2) the sums which will later be billed to con-
 sumers for gas manufactured by the company and already used by
 such consumers, but which have not yet been billed. The Company
 as already used and paid for oil, coal, other materials, and labor, in
 making this gas. On the average, about twenty days elapse between
 the furnishing of gas to a consumer and the sending to him of the
 bill which transfers the debt to the status of an account receivable,
 unless this element of gas furnished but not yet billed is allowed as
 part of working capital, investors in the company will be denied a
 return on a quantity of assets for which they have had to provide
 funds.

There is no inflexible rule, applicable to all companies, for de-
 termining with exactness the amount of working capital required by
 a particular company. For this Company, under the conditions
 under which it does business at the present time, I am of the opinion
 that the following amounts for working capital are a conservative
 statement of requirements:

Materials and Supplies.....	\$60,000.00
Cash (in office and banks).....	50,000.00
Accounts receivable	35,000.00
Gas furnished to consumers but not yet billed.....	20,000.00
	<hr/> \$165,000.00

This amount is more of working capital than the Company has
 had, but it is no more than the Company needs and should have, in
 view of the present prices of materials, supplies, labor, etc. The fact
 that in other years the Company has struggled along under the pres-
 statutory rate, with an amount less, from time to time, than the
 amount now shown, should not control the amount properly to be al-
 led, in view of the present level of prices.

General Summary of Costs.

	Buildings.	Apparatus.
Generator House.....	\$15,011.98	\$25,059.00
Generator House.....	16,688.01	40,864.75
Boiler Room	756.97	2,217.00
Boiler House	7,438.10	22,527.89
Addition to Boiler House..	702.53	5,762.44
Gasine House	4,187.74	4,587.00
Gas Pump House	962.24	1,940.00
Two Story Coal Bin.....	7,771.79	.....
Two Story Coal Bin.....	2,202.83	.....
Gas House	898.76	143.50
Governor House	6,919.71	2,995.00
Storage	3,682.09	285.23
Gasometer House for Purification.....	148.51	656.50

	Buildings.	Apparatus.
Valve House (250 M. Holder)	548.89	.....
Valve House (100 M. Holder)	432.34	.....
Compressor House	2,419.05	6,562.36
Hose House	63.12	213.00
Tar Well .....	.....	760.75
Store House	799.17	.....
Paint House	221.53	.....
Deep Well Pump House..	342.99	1,300.88
Gasoline House	91.86	285.00
Drip Pump Shed	227.56	200.00
Oil Tank Enclosure.....	4,114.85	.....
Tar Storage .....	.....	15,236.71
Open Coal Bins.....	2,145.52	.....
Equipment for Shop.....	.....	1,025.44
Apparatus in Yard .....	.....	234,982.87
Gas Mains (Bldgs. & Yard)	.....	27,793.41
Small Piping .....	.....	17,565.15
Works Office & Dwelling..	16,000.00	.....
Miscellaneous .....	.....	2,117.52
Pump House near Storage Holder	156.77	453.87
	\$94,934.91	\$415,535.27
		\$510,470.18
Street Mains and Paving.....		1,071,138.77
Tools and Implements.....	1,002.08	
Laboratory Equipment	2,448.67	
Office Furniture & Fixtures.....	6,023.00	
Stable Equipment	5,424.06	
Services	175,563.08	
Meters	174,162.77	
Gas Appliances	85,426.56	
Are Lamps	3,173.16	
		453,223.32
Total		\$2,034,832.27

(Here follow tables marked pages 713-797.)

1 2137

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OLD GENERATOR HOUSE No. 1.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Tot</i> <i>Co:</i>	
1 EXCAVATION						
1a Shallow Earth		199	Cu.Yds.	\$1.18	\$234.82	
1e Back Fill		52	"	.65	33.80	
2 CONCRETE						
2a Plain Concrete		44	"	12.90	567.60	
3 RUBBLE MASONRY						
3a Bluestone and Sandstone						
Footings		1,225	Cu.Ft.	.77	943.25	2138
4 BRICK WORK						
4a Common Brick Walls.....		99,425	Bricks	65.88	6,550.12	
5 CUT STONE						
5a Bluestone, Sills, etc.....		22	Cu.Ft.	5.29	116.38	
6 PAVING						
6c 2½" Concrete Floor		1,106	Sq.Ft.	.178	196.87	
6h Cinder Fill		553	Cu.Ft.	.090	49.77	
7 LUMBER						
7b Purlins, Framing, etc.....		180	Ft.B.M.	125.35	22.56	
7c T&G Flooring, Sheathing, etc.		16	"	119.47	1.91	
7d Wood Trim, Stairway, etc..		353	"	382.50	135.02	
Carried Forward						<u>\$8,852.10</u>

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2140 2

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OLD GENERATOR HOUSE (Cont'd.).

Item	Material	Quan-	BUILDING.		Total Cost
			Unit	Price	
			Brought Forward		\$8,852.10
	8 WINDOWS				
	8a D. H. Windows incl. Frame.	113	Sq.Ft.	\$2.10	237.30
	9 DOOR TRANSOMS				
	9a Wood Transoms	12	"	.280	33.60
	10 DOORS				
2141	10a Wood Panel Doors	46	"	.245	112.70
	10b Batten Doors	61	"	.54	32.94
	10f Sliding Batten Doors	74	"	.96	71.04
	12 PAINT				
	12a Cold Water Paint	3,657	"	.02%	100.57
	12b Oil Paint	6,217	"	.04	248.68
	13 ROOFING				
	13b Galv. Corrugated Iron	1,995	"	.21	418.95
	14 FLASHING				
	14a Galv. Iron	119	"	.35	41.65
	15 STEEL				
	15a Floor Beams, Lintels, etc..	8,271	Pounds	.083	686.49
	15b Architectural Steel	653	"	.171	111.66
	15d Roof Trusses, Columns, etc.	6,579	"	.10	657.90
	Carried Forward				\$11,605.58

2142

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OLD GENERATOR HOUSE (Cont'd) No. 1.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
		Brought Forward			
					\$11,605.58
17	CAST IRON				
17a	Miscellaneous Small Cast- ings	20	Lbs.	.091	1.82
17b	Columns	2,187	"	.077	168.40
17c	Floor Plates	24,326	"	.091	2,213.67
21	GALV. IRON GUTTERS				
21a	6" Galv. Iron Gutter.....	48	Feet	.55	26.40
22	PIPE RAIL, ETC.				
22a	1 1/4 Dia. & 1 1/2 Dia. Pipe, Fittgs., etc.	530	Lbs.	.30	159.00
	LIGHTING FIXTURES				
	Gas Burners	14		5.00	70.00
	Gas Burner Brackets.....	11		1.75	19.25
	Humphrey Arc Lights.....	3		11.00	33.00
	Omissions & Contingencies.		5%		
					<u>\$14,297.12</u>
					<u>714.86</u>
	Total				<u>\$15,011.98</u>

2145

2146 4

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OLD GENERATOR HOUSE No. 1.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
7' 6" Lowe Water Gas Set, Including Generator, Car- buretter, Superheater Linings, etc., U. G. I. Contracting Co.		2	Sets	\$23,981.00	
6' 0" Dia. x 16' 0" High Shaving Scrubber		1		1,078.00	
	Total				\$25,059.00

2147

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THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—NEW GENERATOR HOUSE No. 2.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
1 EXCAVATION					
1a Shallow Earth		292	Cu.Yds.	1.18	\$344.56
1e Back Fill		68	"	.65	44.20
2 CONCRETE					
2a Plain Concrete		51	"	12.90	657.90
2d 2½" Concrete Walls		183	Sq.Ft.	.81	148.23
2e 2½" Concrete Roof Slab....		121	"	.42	50.82
3 RUBBLE MASONRY					
3a Bluestone & Sandstone Foot- ings		1,208	Cu.Ft.	.77	930.16
4 BRICK WORK					
4a Common Brick Walls.....	106,483		Bricks	65.88	7,015.10
4b Brick Foundations for Ap- paratus	10,893		"	60.58	659.90
5 CUT STONE					
5a Bluestone, Lintels, Sills, etc.	54		Cu.Ft.	5.29	285.66
6 PAVING					
6a Brick on Edge.....	2,625		Bricks	37.15	97.52
6b 1½" Concrete Floor	444		Sq.Ft.	.169	75.04
6e 4" Concrete Floor	997		"	.231	230.31
6h Cinder Fill	222		Cu.Ft.	.090	19.98
Carried Forward					<u>\$10,559.38</u>

2152 6

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
			Brought Forward		\$10,559.38
7	LUMBER				
7a	Roof Trusses	172	Ft.B.M.	151.83	26.11
7b	Purlins, Framing etc.	1,412	"	125.35	184.99
7d	Wood Trim, Stairway etc... .	200	"	382.50	76.50
8	WINDOWS				
8a	D. H. Windows, Incl. Frame	514	Sq.Ft.	2.10	1,079.40
8b	Circular Windows	16	"	2.25	36.00
10	DOORS				
10b	Batten Doors	206	"	.54	111.24
12	PAINT				
12a	Cold Water Paint	6,021	"	.02 1/4	165.58
12b	Oil Paint	6,139	"	.04	245.56
13	ROOFING				
13b	Galv. Corrugated Iron	2,068	"	.21	434.28
13e	3 Ply Tar Paper.....	476	"	.07	33.32
14	FLASHING				
14a	Galv. Iron	130	"	.35	45.50
			Carried Forward		\$12,997.86

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THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

BUILDING.

Item	Material	Quan-	Unit	Unit	Total
		ty	Unit	Price	Cost
		Brought Forward			
15	STEEL				\$12,997.86
15a	Floor Beams, Lintels, etc...	12,213	Pounds	.083	1,013.68
15b	Architectural Steel	586	"	.171	100.21
15d	Roof Trusses	8,406	"	.10	840.60
15f	Tie Rods	106	"	.176	18.66
16	DOWN SPOUTS				
16c	4" Wrought Iron Pipe incl. all connections	19	Feet	.95	18.05
16f	4" Galv. Iron Pipe Incl. all connections	16	"	.45	7.20
17	CAST IRON				
17a	Miscellaneous Small Castings	25	"	.091	2.28
17c	Floor Plates	7,583	"	.091	690.05
21	GALV. IRON GUTTERS				
21a	5" Galv. Iron Gutter.....	35	"	.55	19.25
22	PIPE RAIL				
22a	1 $\frac{1}{4}$ " Dia. Pipe Fittings etc.	135	Pounds	.30	40.50
	LIGHTING FIXTURES				
	Gas Burners	14		5.00	70.00
	Gas Burner Brackets.....	12		1.75	21.00
	Humphrey Arc Lamps	2		11.00	22.00
	Electric Light Fixtures	4		8.00	32.00
					<hr/>
Omissions & Contingencies.					\$15,893.34
					794.67
					<hr/>
Total					\$16,688.01
					<hr/>
					2157

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THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—NEW GENERATOR HOUSE No. 2.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Total Cost</i>
	8' 6" Lowe Water Gas Set, Including Generator, Car- buretter, Superheater, Wash Box, Seal Pot, Lin- ings, etc., U. G. I. Con- tracting Co.	1 Set.			\$16,050.00
	8' 6" Dia. x 22' 0" high Condenser with Seal Pot.. 1				7,325.00
2159	Wylie Proportional Meter, 180,000 Cu. Ft. Capacity, Equitable Meter Co..... 1				2,200.00
	6' 0" Dia. Hinman Drum Station Meter, American Meter Co.	2			5,320.00
	4' 0" x 6' 0" x 3' 2" Wet Type Tar Washer, The Gas Machinery Co..... 1				1,450.00
	Type B. Terry Steam Tur- bine Direct connected to No. 6 Sturtevant Blower.. 2 Sets.				3,940.00
	42" P. & A. Dry Type Tar Extractor, The Gas Ma- chinery Company	1			1,650.00
	No. 7 Roots Exhauster, Ca- pacity 111,000 Cu. Ft. per day, P. H. & F. M. Roots Co., Driven by 7" x 10" N. Y. Safety Vertical En- gine, New York Safety Power Co.	1 Set.			2,097.00
2160					
				Carried Forward	\$40,032.00

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—NEW GENERATOR HOUSE (Cont'd) No. 2.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Tot</i> <i>Cos</i>
			Brought Forward	\$40,032.	
No. 3 Revivifying Machine, Connally Iron Sponge & Governor Co.	1				
Belting for Engine, etc....				85.00	
1½" Class "A" Governor, Pickering Governor Co....	1			2.00	
Class "D. B." Force Feed					33.00
Lubricator, Manzel Bros..	1				
6" x 5" x 10" Force Pump,				15.00	
M. T. Davidson Co.....	1				
6" x 4" x 6" Water Pump, Worthington	1			315.00	
¾" Control Governor, The Fisher Governor Co.....	1				170.00
Class "H. H." Force Feed					
Lubricator, Manzel Bros..	1				30.00
Type C. Single Guide Hoist, John Deere Plow Co.....	1				20.00
Direct connected to 4½ H. P., A. C. Westinghouse					
Motor	1				44.00
Total				118.75	
				\$40,864.75	

2164 10

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—EXHAUSTER ROOM No. 3.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
1	EXCAVATION				
1a	Shallow Earth	11	Cu.Yds.	.18	\$12.98
1e	Backfill	3	"	.65	1.95
2	CONCRETE				
2a	Plain Concrete	4	"	12.90	51.60
3	RUBBLE MASONRY				
3a	Bluestone & Sandstone Foot- ings	50	Cu.Ft.	.77	38.50
4	BRICK WORK				
4a	Common Brick Wall.....	3,287	Bricks	65.88	216.55
5	CUT STONE				
5a	Bluestone Sills	2	Cu.Ft.	5.29	10.58
6	PAVING				
6e	4" Concrete Floor.....	197	Sq.Ft.	.231	45.51
7	LUMBER				
7b	Purlins, Framing etc.....	262	Ft.B.M.	125.35	32.84
10	DOORS				
10b	Batten Doors	24	Sq.Ft.	.54	12.96
12	PAINT				
12b	Oil Paint	457	Sq.Ft.	.04	18.28
				Carried Forward	\$441.75

2166

11 2167

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—EXHAUSTER ROOM (Cont'd) No. 3.

Item	Material	BUILDING.			
		Quan-	Unit	Unit Price	Total Cost
		Brought Forward			\$441.75
13 ROOFING					
13b Galv. Corrugated Iron.....	197	Sq.Ft.	.21	41.37	
14 FLASHING					
14a Galv. Iron	53	"	.35	18.55	
15 STEEL					
15a Floor Beams, Lintels, etc...	100	Pounds	.083	8.30	
15d Roof Trusses, etc.....	587	"	.10	58.70	2168
18 MISCELLANEOUS					
18c Skylight	55	Sq. Ft.	2.50	137.50	
LIGHTING FIXTURES					
Gas Burners	1		5.00	5.00	
Gas Burner Brackets.....	1		1.75	1.75	
Electric Light Fixture.....	1		8.00	8.00	
Omissions & Contingencies.	5%				\$720.92
					36.05

					\$756.97

2169

2170 12

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—EXHAUSTER ROOM No. 3.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>		<i>Price</i>	<i>Cost</i>
	No. 7 Roots Exhauster, P. H. & F. M. Roots Co., Driven by 7" x 10" N. Y. Safety Vertical Steam En- gine, New York Safety Power Co.	1 Set.			\$2,097.00
2171	No. 3 Revivifying Machine, Connelly Iron Sponge & Gov. Co.	1			85.00
	Belting for Engine.....				2.00
	1 $\frac{1}{4}$ " Class "A" Governor, Pickering Governor Co....	1			33.00
	Total				<hr/> \$2,217.00

2172

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THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—BOILER HOUSE No. 4.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		87	Cu.Yds.	1.18	\$102.66
1e Backfill		42	"	.65	27.30
2 CONCRETE					
2a Plain Concrete Footings....		32	"	12.90	412.80
4 BRICK WORK					
4a Common Brick Walls	55,283		Bricks	65.88	3,642.04
5 CUT STONE					
5a Bluestone Sills		2	Cu.Ft.	5.29	10.58
6 PAVING					
6e 4" Concrete Floor	638		Sq.Ft.	.231	147.38
8 WINDOWS					
8a S. H. Windows Incl. Frame.		134	"	2.10	281.40
10 DOORS					
10b Batten Doors	100		"	.54	54.00
10c Tin Clad Hinged Doors....	21		"	1.25	26.25
12 PAINT					
12a Cold Water Paint	2,260		"	.024%	62.15
12b Oil Paint	913		"	.04	36.52
Carried Forward					\$4,803.08

2175

2176 14

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—BOILER HOUSE (Cont'd) No. 4.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>BUILDING.</i>	
				<i>Unit Price</i>	<i>Total Cost</i>
				Brought Forward	\$4,803.08
13	ROOFING				
13e	3 Ply Tar Paper.....	114	Sq.Ft.	.07	7.98
13g	Asbestos Steel	1,363	"	.70	954.10
15	STEEL				
15a	Floor Beams, Lintels, etc...	733	Pounds	.083	60.84
15d	Steel Trusses, Columns, etc..	6,939	"	.10	693.90
16	DOWN SPOUTS				
16d	5" W. I. Pipe, incl. all conn.	50	Feet	1.25	62.50
18	MISCELLANEOUS				
18b	Copper Ventilators	3		110.00	330.00
18g	Tile Coping	75	Feet	.89	66.75
18m	Copper box for 5" W. I. Pipe	1		2.75	2.75
	LIGHTING FIXTURES				
	Gas Burners	10		5.00	50.00
	Gas Burner Brackets.....	8		1.75	14.00
	Humphrey Arc Lights	2		11.00	22.00
	Electric Light Fixtures.....	2		8.00	16.00
					\$7,083.90
	Omissions & Contingencies..			5%	354.20
				Total	\$7,438.10

2178

15 2179

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—BOILER HOUSE No. 4.

Item	Material	Quan-	EQUIPMENT.		
			Unit	Unit Price	Total Cost
The Babcock and Wilcox Co.					
Boilers, two in one battery (Known as No. 1 and No. 2), Including brickwork, soot, cleaners, etc.....		2			\$15,435.00
Foundation for boilers:					
1a Excavation		39	Cu.Yds.	\$1.18	46.02
1e Back Fill		14	"	.65	9.10
2c Reinforced Concrete		21	"	19.00	399.00
Steel Overflow Tank 20' Dia. x 55" high, Capacity 60 Gal.		1			68.28
Support for Tank:					
15d Steel Brace		16	Lbs.	.10	1.60
6" x 4" x 6" Water Supply Pumps, Worthington		2			340.00
Class "H. A." Force Feed Lubricator, Manzel Broth- ers		1			20.00
Class "P. A." Force Feed Lubricator, Manzel Broth- ers		1			15.00
2" V. D. Empire Meter, Na- tional Meter Co.		1			165.00
No. 2 Oil Burners and Reg- ulating Cocks, W. N. Best Company		2			2181
18" No. 1 Turbo-undergrate Blowers		2			85.00
No. A. Moore Steam Pump..		1			300.00
No. 435 Cochrane Feed Wa- ter Heater and Purifier..		1			25.00
Cunningham Boiler		1			404.36
		1			5,214.53
Total					\$22,527.89

2182 16

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ADDITION TO BOILER HOUSE No. 5.

Item	Material	Quantity	BUILDING.		Total Cost
			Unit	Unit Price	
	1 EXCAVATION				
	1a Shallow Earth	43	Cu.Yds.	.18	\$50.74
	1e Backfill	5	"	.65	3.25
	6 PAVING				
	6e 4" Concrete Floor	395	Sq.Ft.	.231	91.25
	7 LUMBER				
	7b Purlins, Framing etc.....	1,014	Ft.B.M.	125.35	127.10
2183	8 WINDOWS				
	8a D. H. Windows, incl. Frame.	44	Sq.Ft.	2.10	92.40
	10 DOORS				
	10b Batten Doors	29	"	.54	15.66
	13 ROOFING				
	13b Galv. Corrugated Iron.....	1,293	"	.21	271.53
	14 FLASHING				
	14a Galv. Iron	49	"	.35	17.15
	Omissions & Contingencies..		5%		
	Total				\$702.53

2184

17 2185

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ADDITION TO BOILER HOUSE No. 5.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Tot</i> <i>al</i> <i>Cost</i>
No. 16 Improved Economic Boiler (Known as No. 4)					
Including setting, stack, etc., Erie City Iron Works		1			\$5,649.00
Steel Blow Off Tank 3' 0"					
Dia. x 5' 6" Long.....		1			113.44
Total				\$5,762.44	2186

2187

2188 18

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ENGINE HOUSE No. 6.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>	<i>Unit</i>	<i>Price</i>	<i>Cost</i>
	1 EXCAVATION				
	1a Shallow Earth	55	Cu.Yds.	\$1.18	\$64.90
	1e Back Fill	25	"	.65	16.25
	2 CONCRETE				
	2a Plain Concrete	2	"	12.90	25.80
	3 RUBBLE MASONRY				
	3a Bluestone & Sandstone Foot- ings	577	Cu.Ft.	.77	444.29
	4 BRICK WORK				
	4a Common Brick Walls.....	16,794	Bricks	65.88	1,106.39
	4b Brick Foundations for App. 2,182		"	60.58	132.19
	5 CUT STONE				
	5a Bluestone Sills	2	Cu.Ft.	5.29	10.58
	7 LUMBER				
	7b Floor Joists, Framing etc...	1,452	Ft.B.M.	125.35	182.01
	7c T&G Flooring, Sheathing, etc.	919	"	119.47	109.79
	7d Wood Trim, Stairway, etc..	489	"	382.50	187.04
	8 WINDOWS				
	8a D. H. Windows, incl. Frame	98	Sq.Ft.	2.10	205.80
2189	Carried Forward				
					\$2,485.04

2190

19 2191

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ENGINE HOUSE (Cont'd) No. 6.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>	
			Brought Forward		\$2,485.04	
10 DOORS						
10b Batten Doors		62	Sq.Ft.	.854	33.48	
10c Tin Clad Hinged Doors.....		91	"	1.25	113.75	
10f Sliding Batten Doors.....		34	"	.96	32.64	
12 PAINT						
12a Cold Water Paint.....		996	"	.0234	27.39	
12b Oil Paint		4,141	"	.04	165.64	2192
13 ROOFING & SIDING						
13b Galv. Corr. Iron.....		1,165	"	.21	244.65	
13h Plain Galv. Iron.....		469	"	.165	77.39	
14 FLASHING						
14a Galv. Iron		34	"	.35	11.90	
15 STEEL						
15a Lintels, etc.		733	Pounds	.083	60.84	
15d Roof Trusses, Columns, etc..		5,807	"	.10	580.70	
16 DOWN SPOUT						
16e 3" Galv. Iron Pipe incl. all connections		37	Feet	.40	14.80	
			Carried Forward		<u>\$3,848.22</u>	

2193

2194 20

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ENGINE HOUSE (Cont'd) No. 6.

Item	Material	Quan-	BUILDING.		
			Unit	Unit Price	Total Cost
			Brought Forward		\$3,848.22
21	GALV. IRON GUTTER				
21a	4" Galv. Iron Gutter.....	41	Feet	\$.55	22.55
22	PIPE RAIL				
22a	1½ dia. Pipe, Fittings, etc..	226	Pounds	.30	67.80
	LIGHTING FIXTURES				
	Gas Burners	6		5.00	30.00
2195	Gas Burner Brackets.....	5		1.75	8.75
	Humphrey Arc Lights.....	1		11.00	11.00
	Omissions & Contingencies..		5%		\$3,988.32
	Total				199.42
					\$4,187.74

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21 2197

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ENGINE ROOM No. 6.

<i>Item</i>	<i>Material</i>	EQUIPMENT.			<i>Total Cost</i>
		<i>Quantity</i>	<i>Unit</i>	<i>Unit Price</i>	
No. 7 Monogram Blower, B. F. Sturtevant Co.	1			\$428.00	
10" x 12" N. Y. Safety Steam Vertical Engine, New York Safety Power Co.	1			1,350.00	
Belting for Engine & Blower 10½" x 10¼" Horizontal Steam Engine, Macintosh & Seymour	1			170.00	2198
Class "H. B." Force feed Lubricator, Manzel Bros..	1			Not included	
Shafting Hangers & Pulleys	1			19.00	
Steam Hydraulic Plunger Type Elevator, Craig- Ridgeway Co.	1			120.00	
Total				2,500.00	
				<hr/>	
				\$4,587.00	

2199

2200 22

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—PUMP HOUSE No. 7.

	<i>Item</i>	<i>Material</i>	BUILDING.			
			<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
			<i>Quantity</i>	<i>Unit</i>	<i>Price</i>	<i>Cost</i>
	1 EXCAVATION					
	1a Shallow Earth		25	Cu.Yds.	\$1.18	\$29.50
	1e Back Fill		14	"	.65	9.10
	2 CONCRETE					
	2a Plain Concrete		2	"	12.90	25.80
	3 RUBBLE MASONRY					
	3a Bluestone & Sandstone Footings		207	Cu.Ft.	.77	159.39
	4 BRICK WORK					
	4a Common Brick Walls.....		5,462	Bricks	65.88	359.84
	4b Brick Foundation for App... .		263	"	60.58	15.93
	5 CUT STONE					
	5a Bluestone Sills & Lintels....		4	Cu.Ft.	5.29	21.16
	6 PAVING					
	6a Brick on Edge.....		766	Bricks	42.72	32.72
	7 LUMBER					
	7d Wood Trim, etc.		16	Ft.B.M.	382.50	6.12
	8 WINDOWS					
	8a D. H. Windows, incl. Frame		11	Sq.Ft.	2.10	23.10
	10 DOORS					
	10b Batten Doors		24	"	.54	12.96
					Carried Forward	\$695.62

2202

23 2208

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—PUMP HOUSE (Cont'd) No. 7.

Item	Material	BUILDING.			Total Cost
		Quan-	Unit	Unit Price	
12 PAINT			Brought Forward,		\$695.62
12a Cold Water Paint	340	Sq.Ft.	\$02 1/4		9.35
12b Oil Paint	766	"	.04		30.64
13 ROOFING					
13b Galv. Corrugated Iron	196	"	.21		41.16
14 FLASHING					
14a Galv. Iron	13	"	.35		4.55
15 STEEL					2204
15d Roof Trusses, etc.....	1,171	Pounds	.10		117.10
18 MISCELLANEOUS					
18a Galv. Iron Ventilators	1		10.00		10.00
LIGHTING FIXTURES					
Electric Light Fixture	1		8.00		8.00
Omissions & Contingencies..					\$916.42
					45.82
Total					\$962.24

2205

2206 24

THE BARTLETT HAYWARD COMPANY

BALTIMORE, Md.

Building—PUMP HOUSE No. 7.

		EQUIPMENT.			
		Quan-	Unit	Unit Price	Total Cost
Item	Material	ty			
	4½" x 4" x 6" Oil Pump, M. T. Davidson Co.	2			\$480.00
	4½" x 2½" x 6" Seal Pump, M. T. Davidson Co.	1			190.00
	4½" x 2½" x 6" Tar Pump, M. T. Davidson Co.	1			190.00
	4½" x 2½" x 6" Drip Pump, M. T. Davidson Co.	1			190.00
2207	6" x 4" x 8" Reserve and Drip, M. T. Davidson Co.	2			560.00
	C. I. Oil Heater, 22" Dia. x 40" Long, National Pipe Bending Co.	1			200.00
	Class "H. A." Force Feed Lubricator, Manzel Bros. Pint Brass Lubricators, De- troit Lubricator Co.	2			40.00
	1" Vertical Dial Empire Meter and Connection, Na- tional Meter Co.	2			24.00
		1			66.00
	Total				\$1,940.00

2208

25 2209

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TWO STORY COAL BIN No. 8.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		106	Cu.Yds.	1.18	\$125.08
1e Back Fill		51	"	.65	33.15
2 CONCRETE					
2a Plain Concrete Footings....		27	"	12.90	348.30
6 PAVING					
6c 4" Concrete Floor		2,628	Sq.Ft.	.231	607.07
7 LUMBER					
7b Floor Joists, Purlins, Fram-		28,962	Ft.B.M.	125.35	3,630.39
ing, etc.			"	119.47	868.07
7c T&G Flooring, Sheathing, etc.		7,266	"	382.50	136.94
7d Wood Trim, Stairway, etc..		358	"	.19	480.51
7e Novelty Siding		2,529	Sq.Ft.	3.50	3.50
7f Column		1			
8 WINDOWS					
8a D. H. Windows Incl. Frame		253	Sq.Ft.	2.10	531.30
10 DOORS					
10a Wood Panel Doors		23	"	2.45	56.35
10b Batten Doors		142	"	.54	76.68
Carried Forward					\$6,897.34

2211

2212 26

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—TWO STORY COAL BIN (Cont'd) No. 8.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>	<i>Unit</i>	<i>Price</i>	<i>Cost</i>
Brought Forward,					
					\$6,897.34
12 PAINT					
12b Oil Paint		2,716	Sq.Ft.	.04	108.64
13 ROOFING					
13f Rubberoid		3,709	"	.08	296.72
LIGHTING FIXTURES					
2213	Gas Burners	6		5.00	30.00
	Gas Burner Brackets.....	4		1.75	7.00
	Humphrey Arc Lights	2		11.00	22.00
	Electric Light Fixtures.....	5		8.00	40.00
					<hr/>
					\$7,401.70
	Omissions & Contingencies.			5%	<hr/>
					370.09
					<hr/>
	Total				\$7,771.79

2214

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—ONE STORY COAL BIN No. 9.

BUILDING.					
Item	Material	Quan-tity	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		57	Cu.Yds.	1.18	\$67.26
1e Back Fill		18	"	.65	11.70
2 CONCRETE					
2a Plain Concrete Footings....		13	"	12.90	167.70
6 PAVING					
6e 4" Concrete Floor		2,047	Sq.Ft.	.231	472.86
7 LUMBER					
7b Purlins, Framing, etc.....		6,999	Ft.B.M.	125.35	877.32
7c T&G Sheathing, etc.....		1,960	"	119.47	234.16
13 ROOFING					
13f Rubberoid		2,298	Sq.Ft.	.08	183.84
15 STEEL					
15f Tie Rods, etc.....		242	Pounds	.176	42.59
LIGHTING FIXTURES					
Gas Burners		6		5.00	30.00
Gas Burner Brackets		6		1.75	10.50
Omissions & Contingencies.		5%			
					2,097.93
					104.90
Total					\$2,202.83

2218 28

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—Oil House No. 10.

BUILDING.					
<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
	1 EXCAVATION				
	1a Shallow Earth	23	Cu.Yds.	1.18	\$27.14
	1e Back Fill	14	"	.65	9.10
	2 CONCRETE				
	2a Plain Concrete Footings ...	9	"	12.90	116.10
	4 BRICK WORK				
	4a Common Brick Walls.....	5,601	Bricks	65.88	368.99
2219	5 CUT STONE				
	5a Bluestone, Sills, Lintels....	11	Cu.Ft.	5.29	58.19
	6 PAVING				
	6e 4" Concrete Floor	139	Sq.Ft.	.231	32.11
	7 LUMBER				
	7b Purlins, Framing, etc.....	168	Ft.B.M.	125.35	21.05
	7c T&G Sheathing, etc.	87	"	119.47	10.39
	8 WINDOWS				
	8a S. H. Windows, Incl. Frame	53	Sq.Ft.	2.10	111.30
			Carried Forward,		\$754.37

2220

29 2221

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OIL HOUSE (Cont'd) No. 10.

Item	Material	BUILDING.			Total Cost
		Quan- tity	Unit	Unit Price	
		Brought Forward			\$754.3
10 DOORS					
10b Batten Doors		28	Sq.Ft.	.54	15.12
12 PAINT					
12a Cold Water Paint		360	"	.02%	9.90
12b Oil Paint		414	"	.04	16.56
13 ROOFING					
13b Galv. Corrugated Iron		221	Sq.Ft.	.21	46.41
14 FLASHING					2222
14a Galv. Iron		16	"	.35	5.60
LIGHTING FIXTURES					
Electric Light Fixtures....		1		8.00	8.00
Omissions & Contingencies..					855.96
					42.30
Total					\$898.76

2228

2224 30

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—OIL HOUSE No. 10.

<i>Item</i>	<i>Material</i>	EQUIPMENT.			<i>Total Cost</i>
		<i>Quan- tity</i>	<i>Unit</i>	<i>Price</i>	
1 Ton Double Duplex Chain Hoist, Chisholm Moore Mfg. Co.		1		\$40.00	
50 Gallon Galv. Iron Oil Cans		5		90.00	
Rumsey Handle Oil Pump..		1		12.00	
Galv. Tin Spout Funnel 12" Dia. top, 2 ¹ 4" Long.....		1		1.50	
Total					\$143.50

2225

2226

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GOVERNOR HOUSE No. 11.

BUILDING.					
Item	Material	Quan- tity	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		152	Cu.Yds.	1.18	\$179.36
1b Deep Excavation (6' to 12')		31	"	1.18	36.58
1e Back Fill		43	"	.65	27.95
2 CONCRETE					
2a Plain Concrete Footings...		28	"	12.90	361.20
4 BRICK WORK					
4a Common Brick Walls	35,790		Bricks	65.80	2,354.98
4b Brick Foundations for App.	208		"	60.58	12.60
5 CUT STONE					
5a Bluestone Sills, etc.....	85		Cu.Ft.	5.29	449.65
6 PAVING					
6f 5" Concrete Floor	468		Sq.Ft.	.266	124.49
6h Cinder Fill	252		Cu.Ft.	.090	22.68
7 LUMBER					
7b Floor Joists, Purlins, Fram- ing, etc.	1,492		Ft.B.M.	125.35	187.02
8 WINDOWS					
8a S. H. Windows, Incl. Frame	239		Sq.Ft.	2.10	501.90
10 DOORS					
10a Wood Panel Door	25		"	2.45	61.25
11 WIRE SCREENS					
11a $\frac{1}{8}$ " Wire Window Guards.	218		"	1.90	414.20
Carried Forward					\$4,733.86

2229

2230 32

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GOVERNOR HOUSE (Cont'd) No. 11.

Item	Material	Quan-	Unit	Unit	BUILDING.			
					ty	Price	Total	Cost
					Brought Forward,		\$4,733.86	
12	PAINT							
12b	Oil Paint	3,768	Sq.Ft.	.04			150.72	
13	ROOFING							
13d	Gravel on 5 Ply Tar Paper	431	"	.15			64.65	
14	FLASHING							
14b	Copper	103	"	.75			77.25	
2231	15 STEEL							
15a	Floor Beams, Lintels, etc...	6,271	Pounds	.083			520.49	
15b	Architectural Steel	1,548	"	.171			264.71	
15c	Steel Floor Plates	5,732	"	.111			636.25	
16	DOWN SPOUTS							
16a	3" W. I. Pipe incl. all con-							
	nections	22	Feet	.71			15.62	
17	CAST IRON							
17b	C. I. Posts	989	Pounds	.077			76.15	
22	PIPE RAIL							
22a	1½" & 1½" W. I. Pipe &							
	Fittings	115	"	.30			34.50	
	LIGHTING FIXTURES							
	Electric Light Fixtures	2		8.00			16.00	
							\$6,590.20	
	Omissions & Contingencies..			5%			329.51	
2232	Total						\$6,919.71	

33 2238

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GOVERNOR HOUSE No. 11.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Tot-</i> <i>Cos</i>	
12" Balance Governor, Model 1904, Connelly Iron Sponge & Gov. Co.....		1			\$585.00	
16" Balance Governor, Model 1915, Connelly Iron Sponge & Gov. Co.....		1			775.00	
12" Automatic Governor, Model 1904, Connelly Iron Sponge & Gov. Co.....		1			685.00	2234
16" Automatic Governor, Model 1915, Connelly Iron Sponge & Gov. Co.....		1			950.00	
Total					\$2,995.00	

2285

2236 34

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GARAGE No. 12.

Item	Material	Quantity	BUILDING.		
			Unit	Unit Price	Total Cost
1	EXCAVATION				
1a	Shallow Earth	69	Cu.Yds.	.18	\$69.62
1e	Back Fill	44	"	.65	28.60
2	CONCRETE				
2a	Plain Concrete Footings ...	25	"	12.90	322.50
6	PAVING				
6e	4" Concrete Floor	1,18	Sq.Ft.	.231	350.66
6h	Cinder Fill	822	Cu.Ft.	.090	73.98
7	LUMBER				
7b	Floor Joists, Purlins, Framing, etc.	5,831	Ft.B.M.	125.35	730.92
7c	T&G Flooring, Sheathing, etc.	1,327	"	119.47	158.54
7d	Wood Trim, etc.....	19	"	382.50	7.27
7e	Clapboard	1,046	Sq.Ft.	.19	198.74
8	WINDOWS				
8a	D. H. Windows, incl. Frame	95	"	2.10	199.50
10	DOORS				
10b	Batten Doors	61	"	.54	32.94
10d	Sliding Tin Clad Door....	62	"	2.00	124.00
10f	Sliding Batten Door	172	"	.96	165.12
Carried Forward,					\$2,462.39

2238

35 2239

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

Item	Material	BUILDING.			
		Quan-	Unit	Unit Price	Total Cost
11	WIRE SCREENS	Brought Forward,			
11c	Wire Grills between Stalls..	36	Sq.Ft.	1.50	54.00
12	PAINT				
12b	Oil Paint	2,696	"	.04	107.84
13	ROOFING & SIDING				
13b	Galv. Corrugated Iron	810	"	.21	170.10
13c	Shingles	1,284	"	.18	231.12
13h	Plain Galv. Iron	1,323	"	.165	218.30
14	FLASHING				
14a	Galv. Iron	42	"	.35	14.70
15	STEEL				
15a	Floor Beams, etc.....	715	Pounds	.083	59.35
16	DOWN SPOUT				
16e	3" Galv. Iron Pipe, incl. all connections	25	Feet	.40	10.00
18	MISCELLANEOUS				
18c	Skylight	18	"	2.50	45.00
18d	Hay Racks	2		2.00	4.00
18e	Feed Boxes	2		2.00	4.00
		Carried Forward			
					\$3,380.80

2241

2242 36

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

Item	Material	Quan-	BUILDING.		Total Cost
			Unit	Price	
			Brought Forward		\$3,380.80
21	GALV. IRON GUTTER				
21a	5" Galv. Iron Gutter.....	59	Feet	.55	32.45
	LIGHTING FIXTURES				
	Gas Burners	2		5.00	10.00
	Gas Burner Brackets	2		1.75	3.50
	Electric Light Fixtures	10		8.00	80.00
2243	Omissions & Contingencies..		5%		\$3,506.75
					175.34
	Total				\$3,682.09

2244

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE No. 12.

Item	Material	EQUIPMENT.			Total Cost
		Quantity	Unit	Unit Price	
	Maxwell Roadster, Model 1914	1			\$641.2
	Maxwell Touring Car	1			973.44
	Convertible Top for Car.....				232.80
	Maxwell Coupe, Model 1916	1			881.75
	Ford Runabout, Model 1912	1			546.50
	Ford Special Body Delivery Wagons, Model 1916.....	3			1,397.02
	Ford Engine	1			50.00
	“ Rear End	1			15.00
	“ Steering Post	1			2.00
	“ Front Axle	1			1.50
	“ Radiator	1			5.00
	“ Body	1			20.00
	Yale-Towne 1½ ton Duplex Chain Hoist	1			48.40
	½ Ton Brown Traveling Hoisting Pulley	1			9.25
	Support for Hoist.....				
15d	Steel	375	Pounds	.07	26.25
	1/3 H. P. G. E. Motor, 1,800 R. P. M. 110 V 5 Amp. 60 Cycles	1			60.00
	Carried Forward				\$4,910.16

2248 38

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—GARAGE (Cont'd) No. 12.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
			Brought Forward	\$4,910.16	
	250 Gall. Drip Wagon.....			150.00	
	Single Horse Dray Wagon..	1		125.00	
	Dump Cart	1		25.00	
	Bay Horse	1		165.00	
	Set Wagon Harness	1		35.00	
	16 lb Blankets.....	2		10.00	
2249	Set Cart Harness.....	1		40.00	
	Wagon Jack	1		6.25	
	Seneca Falls Lathe	1		100.00	
	Union Emory Tool Grinder.	1		13.33	
	Tire Pumps			40.00	
	Decarbonizer			28.00	
	Iron Cart			20.00	
	Snow Plow			29.35	
	Fire Extinguishers			12.20	
	Total				\$5,709.29
	Garage Equipment		\$285.23		
	Stable Equipment		5,424.06		

2250

**THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.**

Building—EXHAUSTER HOUSE FOR PURIFIERS No. 13.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
7 LUMBER					
7b Purlins, Framing, etc.....		304	Ft.B.M.	125.35	\$38.11
10 DOORS					
10g Galv. Iron Hinged Doors...		16	Sq.Ft.	.88	14.08
12 PAINT					
12b Oil Paint		330	"	.04	13.20
13 ROOFING AND SIDING					
13b Galv. Corrugated Iron		330	"	.21	69.30
LIGHTING FIXTURES					
Gas Burners		1		5.00	5.00
Gas Burner Bracket		1		1.75	1.75
<hr/>					
Omissions & Contingencies..		5%			\$141.44
					7.07
<hr/>					
Total					\$148.51

2252

2254 40

THE BARTLETT HAYWARD COMPANY

BALTIMORE, Md.

Building—EXHAUSTER HOUSE FOR PURIFIERS No. 13.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
	No. 5 Monogram Blower, B. F. Sturevant Co.....	1			\$237.50
	4" x 5" Payne Automatic Steam Vertical Engine, B. W. Payne Sons Chem. Co.	1		400.00	
	Belting for Engine			7.00	
2255	Lukenheimer Senior Brass Pint Lubricator	1			12.00
	Total				\$656.50

2256

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—VALVE HOUSE No. 14.

For 250,000 Cu. Ft. Holder.

BUILDING.

Item	Material	Quan- tity	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		31	Cu.Yds.	\$1.18	\$36.58
1b Deep Excavation (6' to 12')		4	"	1.18	4.72
1e Back Fill		10	"	.65	6.50
4 BRICK WORK					
4a Common Brick Walls.....		5,466	Bricks	65.88	360.10
7 LUMBER					
7b Floor Joists, Purlins, Fram- ing, etc.		209	Ft.B.M.	125.35	26.20
7c T & G Flooring, etc.....		53	"	119.47	6.38
7d Wood Trim, etc.....		16	"	382.50	6.12
8 WINDOWS					
8a D. H. Windows, incl. Frame		9	Sq.Ft.	2.10	18.90
10 DOORS					
10b Batten Doors		14	"	.54	7.56
12 PAINT					
12b Oil Paint		298	"	.04	11.92
13 ROOFING					
13b Galv. Corrugated Iron		142	"	.21	29.82
LIGHTING FIXTURES					
Electric Light Fixtures ...		1		8.00	8.00
<hr/>					
Omissions & Contingencies..		5%			\$522.75
					26.14
<hr/>					
					\$548.89
					2259

2260 42

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—VALVE HOUSE No. 15.

Item	Material	For 100,000 Cu. Ft. Holder.	BUILDING.			Total Cost
			Quantity	Unit	Unit Price	
1	EXCAVATION					
1a	Shallow Earth	19	Cu.Yds.	1.18	\$22.42	
1e	Back Fill	6	"	.65	3.90	
4	BRICK WORK					
4a	Common Brick Walls	4,116	Bricks	65.88	271.16	
5	CUT STONE					
5a	Bluestone, Sills, Lintels, etc.	3	Cu.Ft.	5.29	15.87	
7	LUMBER					
7b	Floor Joists, Purlins, Framing, etc.	160	Ft.B.M.	125.35	20.06	
7c	T & G Flooring, etc.	33	"	119.47	3.94	
7d	Wood Trim, etc.	9	"	382.50	3.44	
8	WINDOWS					
8a	D. H. Windows incl. Frames	11	Sq.Ft.	2.10	23.10	
10	DOORS					
10b	Batten Doors	20	"	.54	10.80	
12	PAINT					
12b	Oil Paint	233	"	.04	9.32	
13	ROOFING					
13b	Galv. Corrugated Iron	94	"	.21	19.74	
	LIGHTING FIXTURES					
	Electric Light Fixtures	1		8.00	8.00	
						\$411.75
	Omissions & Contingencies..				5%	20.59
2262						\$432.34

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—COMPRESSOR HOUSE No. 16.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		61.5	Cu.Yds.	\$1.18	\$72.57
1e Back Fill		30.5	"	.65	19.83
2 CONCRETE					
2a Plain Concrete		7	"	12.90	90.30
3 RUBBLE MASONRY					
3a Bluestone and Sandstone Footings		231	Cu.Ft.	.77	177.87
4 BRICK WORK					2264
4a Common Brick Walls.....	13,736		Bricks	65.88	904.93
4b Brick Foundation for App..	3,192		"	60.58	193.37
5 CUT STONE					
5a Bluestone Sills	3	Cu.Ft.		5.29	15.87
6 PAVING					
6a Brick Floor	825	Bricks		42.72	35.24
6d 3" Concrete Floor	93	Sq.Ft.		.196	18.23
7 LUMBER					
7b Purlins, Framing, etc.....	1,085	Ft.B.M.		125.35	136.00
7g Cornice	44	Feet		2.50	110.00
8 WINDOWS					
8a D. H. Windows incl. Frames	70	Sq.Ft.		2.10	147.00
		Carried Forward		<u>\$1,921.21</u>	

2266 44

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—COMPRESSOR HOUSE (Cont'd) No. 16.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>Quantity</i>	<i>Unit</i>	<i>Price</i>	<i>Cost</i>
			Brought Forward		\$1,921.21
10	DOORS				
10b	Batten Doors	20	Sq.Ft.	.54	10.80
11	WIRE SCREENS				
11b	Window Guards	76	"	.70	53.20
12	PAINT				
12a	Cold Water Paint.....	444	"	.02 1/2	12.21
2267	12b Oil Paint	1,661	"	.04	66.44
13	ROOFING				
13a	Tin Roof	504	"	.30	151.20
16	DOWN SPOUT				
16e	3" Galv. Iron Pipe incl. all connections	37	Feet	.40	14.80
18	MISCELLANEOUS				
18a	Galv. Iron Ventilators.....	2		25.00	50.00
	LIGHTING FIXTURES				
	Electric Light Fixtures....	3		8.00	24.00
					\$2,303.86
	Omissions & Contingencies..		5%		115.19
	Total				\$2,419.05

2268

45 2269

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—COMPRESSOR HOUSE No. 16.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
12"x16"x12" Steam Driven Air Compressor, Worthing. Pump & Mach. Corp.		1		\$3,850.00	
8"x12"x8" Steam Driven Air Compressor, Worthington Pump & Mach. Corp.....		1		2,000.00	
Class "D" Sterling Force Feed Lubricator, Inner-State Machine Prod. Co..		2		70.00	
Steel H. P. Air Tank 3'0" Dia. x 6'0" High.....		1		119.58	
Kings Arch Pressure Gauge 0'6", American Meter Co.		1		67.00	
Bristol Recording Pressure Gauge 12"		1		45.08	
0lb-60lb Foxboro Pressure Recording Gauge		1		37.00	
0lb-120lb Steam Gauge.....		1		8.50	
Kennedy Telemetric Gauge complete		1		350.00	
4" U Gauges.....		2		5.20	
Total				\$6,562.36	2270

2271

2272 46

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—HOSE HOUSE No. 17.

BUILDING.					
	Item	Material	Quan-	Unit	Total
			ty	Price	Cost
	7 LUMBER				
	7b Floor Joists, Purlins, Fram-				
	ing, etc.		254	Ft.B.M.	125.35
	7c T. & G. Flooring.....		25	"	119.47
	10 DOORS				
	10b Batten Doors		15	Sq.Ft.	.54
	12 PAINT				
	12b Oil Paint		160	"	.04
	13 ROOFING AND SIDINGS				
2278	13e 3 Ply Tar Paper.....		154	"	.07
	Omissions & Contingencies..				\$60.11
					3.01
	Total				\$63.12

2274

47 2275

**THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.**

Building—HOSE HOUSE No. 17.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
Hose Cart		1			\$45.00
2" Hose		200	Feet		168.00
Total					\$213.00

2276

2277

2278 48

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TAR WELL No. 18.

APPARATUS.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>		<i>Price</i>	<i>Cost</i>
1	EXCAVATION				
1a	Shallow Earth	57	Cu.Yds.	\$1.18	\$67.26
1b	Deep Excavation (6'0" to 12'0")	21	"	1.18	24.78
1c	Back Fill	28	"	.65	18.20
2	CONCRETE				
2a	Plain Concrete	4	"	12.90	51.60
4	BRICK WORK				
4a	Common Brick Wall	8,541	Bricks	65.88	562.68
					\$724.52
2279	Omissions & Contingencies..			5%	36.23
	Total				\$760.75

2280

49 2281

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—STORE HOUSE No. 19.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Tot</i> <i>Cos</i>
7 LUMBER					
7b Purlins, Framing, etc.....		2,125	Ft.B.M.	125.35	
7c T. & G. Sheathing.....		1,668	"	119.47	\$266.37
7f Circular Columns		8		3.50	199.28
8 WINDOWS					
8a S. H. Windows, incl. Frame		16	Sq.Ft.	2.10	33.60
10 DOORS					
10b Batten Doors		143	"	.54	77.22
13 ROOFING & SIDING					2282
13b Galv. Corrugated Iron		50	"	.21	10.50
13f Rubberoid		923	"	.08	73.84
22 PIPE RACK					
22b 2" Dia. Pipe.....		241	Pounds	.30	72.30
<hr/>					
Omissions & Contingencies..			5%		\$761.11
					72.30
<hr/>					
Total					\$799.17

2283

2284 50

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—PAINT HOUSE No. 20.

		BUILDING.			
Item	Material	Quan-	Unit	Unit	Total
		ty	Unit	Price	Cost
7	LUMBER				
7b	Floor Joists, Purlins, Fram- ing, etc.	299	Ft. B. M.	125.35	\$37.48
7c	T&G. Flooring & Sheathing	600	"	119.47	71.68
8	WINDOWS				
8a	S. H. Windows, incl. Frame	16	Sq.Ft.	2.10	33.60
10	DOORS				
10b	Batten Doors	21	"	.54	11.34
11	WIRE SCREENS				
11b	Window Guards	16	"	.70	11.20
12	PAINT				
12b	Oil Paint	832	"	.04	33.28
13	ROOFING				
13f	Rubberoid	155	"	.08	12.40
					\$210.98
	Omissions & Contingencies..		5%		10.55
					\$221.53
2285	Total				

2286

51 2287

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DEEP WELL PUMP HOUSE No. 21.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		1	Cu.Yds.	.18	\$1.18
2 CONCRETE					
2a Plain Concrete		1	"	12.90	12.90
6 PAVING					
6e 4" Concrete Floor		122	Sq.Ft.	.231	28.18
7 LUMBER					
7b Purlins, Framing, etc.....		697	Ft.B.M.	125.35	87.37
7e Novelty Siding		392	Sq.Ft.	.19	74.48
8 WINDOWS					
8a D. H. Windows, incl. Frame		38	"	2.10	79.80
10 DOORS					
10b Batten Doors		15	"	.54	8.10
12 PAINT					
12b Oil Paint		392	"	.04	15.68
13 ROOFING					
13f Rubberoid		237	"	.08	18.96
<hr/>					
Omissions & Contingencies..		5%			326.65
					16.34
<hr/>					
Total					\$342.99

2289

2290 52

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DEEP WELL PUMP SHED No. 21.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>Quantity</i>		<i>Price</i>	<i>Cost</i>
7 1/2" x 7 1/2" x 6"	Snow Steam				
Pump		1			\$450.00
Class "H. A." Force Feed					
Lubricator, Manzel Bros..		1			20.00
0-30lb Water Pressure Gauge		1			5.98
Deep Water Well, 8" Cas-					
ing, 53 0" Deep.....		1			825.00
2291					
Total					\$1,300.88

2292

53 2293

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—GASOLINE HOUSE No. 22.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		4	Cu.Yds.	.118	\$4.72
1e Back Fill		3	"	.65	1.95
2 CONCRETE					
2a Plain Concrete		3	"	12.90	3.87
6 PAVING					
6d 3" Concrete Floor		28	Sq.Ft.	.196	5.49
6e 4" "		12	"	.231	2.77
7 LUMBER					
7b Purlins, Framing, etc.....		130	Ft.B.M.	125.35	16.30
10 DOORS					
10g Galv. Corr. Iron Hinged Door		13	Sq.Ft.	.88	11.44
13 ROOFING & SIDING					
13b Galv. Corrugated Iron.....		195	"	.21	40.95
Omissions & Contingencies..		5%			\$87.49
					4.37
Total					\$91.86

3
2295

2296 54

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—GASOLINE HOUSE No. 22.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
Bowser Underground Storage Outfit with Pump — 280 Gallon Capacity		1			\$285.00

2297

2298

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—DRIP PUMP SHED No. 23.

BUILDING.					
Item	Material	Quan- tity	Unit U.nit	Unit Price	Total Cost
8	WINDOWS				
8a	S. H. Windows.....	6.7	Sq.Ft.	\$2.10	\$14.07
10	DOORS				
10g	Corrugated Iron Doors....	23.6	"	.88	20.77
12	PAINT				
12b	Oil Paint	483.2	"	.05	24.16
13	ROOFING				
13b	Corrugated Iron Roofing and Siding	218.0	"	.21	45.78
15	STEEL				
15b	Angle Iron Framing.....	718.0	Pounds	.171	122.78
Total					\$227.56

2301

2802 56

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DRIP PUMP SHED No. 23.

EQUIPMENT.					
Item	Material	Quan- tity	Unit	Unit Price	Total Cost
	4x4x7 Cameron Pump, Hold- er Oil	1			\$200.00

2803

2804

57 2305

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OIL TANK ENCLOSURE No. 24.

BUILDING.					
Item	Material	Quan-	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		64	Cu.Yds.	1.18	\$75.52
1f Earth Embankment		631	"	1.20	757.20
2 CONCRETE					
2b Reinforced Concrete		73	"	12.90	941.70
2c " " incl. Forms		65	"	19.00	1,235.00
7 LUMBER					
7b Framing, etc.		97	Ft.B.M.	125.35	12.16 2306
17 CAST IRON					
17a Small Castings		120	Pounds	.091	10.92
18 MISCELLANEOUS					
18k Lawn Sodding		3,028	Sq.Ft.	.05	151.40
23 PILES					
23a 12"Wood Piles 35'0" Long.		21		35.00	735.00
<hr/>					
Omissions & Contingencies..		5%			8,918.90
<hr/>					
Total					195.95
<hr/>					
					\$4,114.85

2307

2309 58

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TAR STORAGE Nos. 27 & 28.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>APPARATUS.</i>		
			<i>Unit</i>	<i>Unit Price</i>	<i>Total Cost</i>
	1 EXCAVATION				
	1a Shallow Earth	1,047	Cu.Yds.	1.18	\$1,235.46
	1b Deep Excavation (6' to 12' Deep)	875	"	1.18	1,032.50
	1c Deep Excavation (12' to 18' Deep)	335	"	1.47	492.45
	1d T. & G. Sheet Piling.....	2,591	Sq.Ft.	.85	2,202.35
	1e Back Fill	506	Cu.Yds.	.65	328.90
	2 CONCRETE				
	2a Plain Concrete	71	"	12.90	915.90
	4 BRICK WORK				
	4a Common Brick Walls	109,775	Bricks	65.88	7,231.98
	5 CUT STONE				
	5a Bluestone Coping	139	Cu.Ft.	5.29	735.31
	22 PIPE RAIL				
	22a 1½" Dia. Pipe & Fittings.	1,121	Pounds	.30	336.30
					<hr/>
					\$14,511.15
	Omissions & Contingencies..			5%	728.56
					<hr/>
	Total				\$15,236.71

2310

59 2811

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OPEN COAL BINS No. 40.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>	
1 EXCAVATION						
1a Shallow Earth		57	Cu.Yds.	1.18	\$67.26	
1e Back Fill		65	"	.65	42.25	
2 CONCRETE						
2a Plain Concrete Footings ...		26	"	12.90	335.40	
3 RUBBLE MASONRY						
3a Bluestone & Sandstone Footings		171	Cu.Ft.	.77	131.67	2812
6 PAVING						
6g 6" Concrete Floor		2,655	Sq.Ft.	.301	799.16	
7 LUMBER						
7b Framing, etc.		5,326	Ft.B.M.	125.85	667.61	
<hr/>						
Omissions & Contingencies..			5%		\$2,043.35	
Total					102.17	
					\$2,145.52	

2818

2814 60

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—EQUIPMENT FOR MACHINE SHOP.

EQUIPMENT.

Item	Material	Quan-	Unit	Unit	Total
		ty	Price		Cost
	No. 14 Heavy Duty Vulcan Blacksmith Forge Buffalo Forg Co.	1			\$40.50
	Drill Press, Aurora Tool Works	1			150.00
	Steel Lathe, Putnam Ma- chine Co.	1			500.00
2815	18"x2" Grindstone & Stand, W. & B. Douglas.....	1			80.00
	Steel Range Boiler Tub, 34" x54"x42"	1			104.94
	Shafting & Pulleys.....				150.00
	Total				\$1,025.44

2816

61 2317

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—YARD.

EQUIPMENT.

Item	Material	Quan-	Unit	Unit	Total
		ty	Unit	Price	Cost
1,000,000 Cu. Ft. Storage Holder in Steel Tank 123'0" Dia. x 31'0", The Bartlett Hayward Co. No. 38.....		1		\$112,252.85	
Foundation for Holder.....				13,742.87	
250,000 Cu. Ft. Holder in Steel Tank 76'4" Dia. x 28'4", Logan Iron Works No. 25		1			2318
Foundation for Holder.....				39,837.00	2
100,000 Cu. Ft. Holder in Steel Tank, 55'4" Dia. x 25'1", Logan Iron Works, No. 26		1		6,078.04	
Foundation for Holder.....					
150,000 Gal. Oil Storage Tank 30'0" Dia. x 30'0", No. 36		1		25,728.99	
Foundation for Oil Tank 25' Piles, 12" Butt, 6" Point		1		3,582.88	
1a Excavation		69	Piles	\$35.00	4,466.61
		65	Cu.Yds.	1.18	2,415.00
					76.70
					Carried Forward, \$208,180.94

2319 13

2320 62

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building--YARD (Cont'd).

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>	<i>Unit</i>	<i>Price</i>	<i>Cost</i>
		Brought Forward \$208,180.94			
	30,000 Gal. Oil Storage Tank 16'0" Dia. x 20'0", The Bartlett Hayward Co. No. 39	1			1,244.97
	Foundation for Oil Tank...				
2321	1a Excavation	16	Cu.Yds.	1.18	18.88
	2a Concrete	14	"	15.38	215.32
	Steel Oil Tank, 53½" Dia. x 16'6" Long	1			Not included
	Steel Tar Tank, 5'6" x 6'0" x12'0", No. 32.....	1			234.00
	Foundation for Steel Tar Tank				
	1a Excavation	6	Cu.Yds.	1.18	7.08
	1e Backfill	2	"	.65	1.30
	2a Concrete	6	"	12.90	77.40
	100'4" high Brick Smoke Stack, M. W. Kellogg Co.	1			2,890.00
	Foundation for Stack.....				
	1a Excavation	55	Cu.Yds.	1.18	64.90
	1e Back Fill	18	"	.65	11.70
	2a Concrete	37	"	15.38	569.06
	Carried Forward \$213,515.55				

2322

63 2323

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—YARD (Cont. 'd).

EQUIPMENT.

Item	Material	Quan-	Unit	Unit	Total	
		ty	Unit	Price	Cost	
				Brought Forward	\$213,515.55	
Steel Purifier Boxes 30'0" x 12'0" x 12'0", The Bartlett Hayward Co. No. 34.		1	Set		6,915.90	
Steel Purifier Boxes 48'0" x 12'0" x 12'0", Quintard Iron Works No. 35.....		1	Set		9,300.47	2
Foundation for Boxes:						
1a Excavation		47	Cu.Yds.	1.18	55.46	
2a Concrete		56	"	15.38	861.28	
Fairbanks 5 Ton Wagon Scale Pit, etc., for Scale No. 29..		1			200.00	
Steel and Wire Fence.....					248.50	
18"x20' Flight Conveyor and Electric line to coal shed for conveyor, National Conveyor & Equipment Co...		1			3,013.71	
Foxboro Recording Thermometer 8", 30 to 150°..		1			814.01	
Total					57.99	
					<u>\$234,982.87</u>	

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2325

2326 64

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GAS MAINS (BUILDING & YARD).

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
	Bell & Spigot Pipe.....	143,475	Pounds	5.46c	\$7,833.74
	Flange Pipe (3' to 6' lengths)	26,183	"	9.75	2,552.84
	Flange Pipe (6' to 9' lengths)	1,759	"	8.75	153.91
	Bell Fittings	39,289	"	8.50	3,339.57
	Flange Fittings	43,144	"	11.25	4,853.70
2327	Blast Mains	3,394	"	22.50	763.65
	Lead	6,338	"	7.50	475.35
	Hemp	298	"	7.50	22.35
	Bolts	1,084	"	7.00	75.88
	24" Gate Screw Valves....	12		\$239.60	2,875.20
	16" " " "	6		139.47	836.82
	12" " " "	36		97.10	3,495.60
	8" " " "	9		57.20	514.80
	Total				\$27,793.41

2328

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—SMALL PIPING.

Item	Material	Quan-	Unit	Unit	Tot
		ty		Price	Cost
STANDARD STEEL PIPE					
1/4"	Diameter	1	Lin.Ft.	\$.10	\$.
5/8"	"	26	"	.11	2.88
1/2"	"	279	"	.15	41.85
3/4"	"	496	"	.20	99.20
1"	"	1,111	"	.29	322.19
1 1/4"	"	2,178	"	.39	849.42
1 1/2"	"	669	"	.47	314.43
2"	"	2,915	"	.63	1,836.45
3"	"	117	"	1.01	118.17
4"	"	163	"	1.31	213.53
5"	"	694	"	2.02	1,401.88
6"	"	45	"	2.75	123.75
		2,466	"	3.56	8,778.96
Total					
TILE DRAIN PIPE					
3"	Diameter	79	Lin.Ft.	.682	\$53.88
4"	"	751	"	.682	512.18
6"	"	213	"	.763	162.52
Total					
LEAD PIPE					
2"	Diameter	38	Lin.Ft.	.87	\$33.06

2833 66

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—SMALL PIPING (Cont'd).

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>ty</i>		<i>Price</i>	<i>Cost</i>
STANDARD GALV. IRON					
PIPE					
	5/8" Diameter	53	Lin.Ft.	\$.18	\$9.54
	1/2" "	73	"	.22	16.06
	5/8" "	72	"	.29	20.88
	1" "	213	"	.42	89.46
	1 1/4" "	72	"	.56	40.32
	1 1/2" "	31	"	.67	20.77
2833	2" "	1,097	"	.94	1,031.18
	3" "	91	"	1.90	172.90
	4" "	98	"	2.54	248.92
	5" "	3	"	3.84	11.52
	Total				\$1,661.55
PIPE COVERING					
	5/8" Diameter	117	Lin.Ft.	.30	\$35.10
	1" "	303	"	.33	99.99
	1 1/4" "	123	"	.37	45.51
	1 1/2" "	139	"	.41	56.99
	2" "	553	"	.45	248.85
	2 1/2" "	50	"	.50	25.00
	4" "	679	"	.75	509.25
	5" "	21	"	.88	18.48
	Total				\$1,039.17

2834

67 2385 41

THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.

Building—SMALL PIPING (Cont'd.).

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
SUMMARY.					
Standard Steel Pipe					\$14,102.79
Tile Drain Pipe					728.58
Lead Pipe					33.06
Standard Galvanized Iron Pipe					1,661.55
Pipe Covering					1,039.17
Total					<hr/> \$17,565.15
					2386 42

2387 .8

2339 68

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OFFICE AND DWELLING.

BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
	Two story brick office building with one story frame extension				\$10,400.00
	Two story Superintendent's frame cottage, with cellar, attic, etc.				5,600.00
2339	Total				\$16,000.00

2340

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—MISCELLANEOUS.

PAVING, ETC.					
Item	Material	Quantity	Unit	Unit Price	Total Cost
1 EXCAVATION					
1a Shallow Earth		6	Cu.Yds.	\$1.18	\$7.08
6 PAVING					
6a Brick		610	Bricks	42.72	26.06
6g 6" Concrete		220	Sq.Ft.	.301	73.70
6j Blue Stone Flagging		66	"	.60	39.60
6k Oxide or Tar & Cinder Pav-					
ing		11,435	"	.15	1,715.25
6m Bluestone Curbing		44	Feet	2.50	110.00
18 MISCELLANEOUS					
18f Wood Flag Pole		1		45.00	45.00
<hr/>					
Omissions and Contingencies					\$2,016.69
					100.83
<hr/>					
Total					\$2,117.52

2343

2344 70

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—PUMP HOUSE NEAR STORAGE HOLDER.
BUILDING.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>tity</i>		<i>Price</i>	<i>Cost</i>
	6 PAVING				
	6g Concrete 6" Thick	67	Sq.Ft.	.301	\$20.18
	7 LUMBER				
	7b Purling, Framing, etc.....	177	Ft.B.M.	125.35	22.19
	8 WINDOWS				
	8a D. H. Windows including Frame	13.2	Sq.Ft.	2.10	27.72
2345	10 DOORS				
	10g Corrugate Iron, Hinged, Doors	14.0	Sq.Ft.	.88	12.32
	13 ROOFING & SIDING				
	13b Galvanized Corrugated Iron.	318.5	"	.21	66.89
	Omissions & Contingencies..				
		5%			
	Total				\$156.77

2346

71 2347

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building--PUMP HOUSE NEAR STORAGE HOLDER.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
7" x 7" x 10"	Davidson				
Pump (Drip Oil).....					\$450.00
Foundation for Pump:					
2 CONCRETE					
2a Plain Concrete Foundation..		.3	Cu.Yds.	\$12.90	3.87
					<hr/>
					\$453.87

2348

2349

2350 72

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS.

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>ty</i>		<i>Price</i>	<i>Cost</i>
	36" Trimo Pipe Wrenches..	2		4.73	\$9.46
	24" " " "	2		2.63	5.26
	18" " " "	2		1.75	3.50
	12" " " "	1		1.23	1.23
	10" " " "	1		.88	.88
	8" " " "	2		.79	1.58
	18" Monkey Wrench.....	1		2.40	2.40
2351	12" " "	2		1.35	2.70
	8" " "	1		.90	.90
	18" Screw Drivers.....	4		1.50	6.00
	18" Levels	2		1.75	3.50
	Hatchet	1		1.25	1.25
	Machinists' Hammers	3		.90	2.70
	Hammer	1		1.50	1.50
	Sledge Hammer	1		2.00	2.00
	Axe	1		2.00	2.00
	1" Cold Chisels.....	12		.75	9.00
	Mason's Large Towel.....	1		1.25	1.25
	Hack Saw Frames.....	2		.50	1.00
	Carried Forward				\$58.11

2352

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS (Cont'd).

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
			Brought Forward	\$58.	
Hand Cross Cut Saw.....		1		2.40	2.40
Cross Cut Saw		1		2.60	2.60
Hack Saw Blades		1	Gross	6.00	6.00
Gas Plyers		3	Pair	.75	2.25
4' 0" Chain Tongs.....		2	"	9.00	18.00
5' 0" " "		3	"	13.50	40.50
4' 0" Pinch Bars.....		2		1.92	3.84
Leather Mallet 2½"		1		1.75	1.75
Machinist Vise		1		13.75	13.75
Pipe Vise		1		9.00	9.00
Hand Drill		1		3.75	3.75
Breast Drill		2		6.75	13.50
Brace		1		2.50	2.50
Rackets		2		2.00	4.00
Old Man		2		8.50	17.00
No. 3 Pipe Cutter.....		1		4.75	4.75
Favorite Socket Wrench.....		1		10.00	10.00
8" Hose		2		1.50	3.00
Wheel Barrows		5		8.00	40.00
Steel Coal Scoops		12		1.75	21.00
			Carried Forward	\$277.70	

2350 74

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—TOOLS & IMPLEMENTS (Cont'd).

EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
					<i>Brought</i> <i>Forward</i>
	Coke Forks	6		1.75	\$277.70 10.50
	Rachet Stock & Dies, 2" to 4"	1		80.00	80.00
	Armstrong No. 2 Stock & Dies	1		6.48	6.48
	Armstrong No. 1 Stock & Dies	1		4.96	4.96
	¾" Pipe Tap	1		.48	.48
	½" "	1		.60	.60
	½" Bolt Tap	1		.35	.35
	1¼", 1½" & 2" Pipe Dies and Rings	1	Set ea.	18.00	18.00
	¼" & ½" Taps and Dies, ½", ¾", ½", ¾" & 1" Dies and Rings	1	"	43.75	43.75
	½", ¾", ½", ¾", ¾" & ¾" Bolt Dies & Rings....	1	"	40.60	40.60
	Pipe Locater	1			65.00
	Respirator	1			40.00
	Cyclone Cleaner	1			132.90
	Pump Liner Tools	1			35.00
	Hose	20	Feet		15.40
	Service Pumps	2			30.36
	Pipe Threading Machine ...	1			150.00
	Thawing Outfit				50.00
2357	Total				\$1,002.08
2358					

75 2359

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—LABORATORY EQUIPMENT.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
No. 408 Hinman-Junker's Calorimeter, complete		2			\$902.00
100" Bar Photometer, completely equipped		1			481.00
60" Bar Photometer, completely equipped		1			448.00
5' Dia. Meter Prover.....		2			320.00
Pulmotor and Mask		1			200.00
Mercury Barometer with vernier		1			60.00
8" Bristol Recording Pressure Gauge		1			37.67
Total					2360 <hr/> \$2,448.67

2361

2362 76

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OFFICE FURNITURE AND FIXTURES.

2363

Item	Material	Quan-	Unit	Unit Price	Total Cost
Safes		5			\$1,775.00
Strong Box		1			150.00
Burroughs Adding Machines		2			850.00
Adding Machine Stand.....		1			20.00
Calculating Machine		1			175.00
Coin Counter		1			150.00
Stamp Machine		1			45.00
Addressograph		1			225.00
Typewriters, Underwood ...		2			225.00
Bookkeepers' Desks		5			250.00
Oak Roll Top Desk.....		1			50.00
6' Standing Desk		1			70.00
Mahogany Desk and Chair..		1			75.00
Mahogany Flat Top Desk...		1			50.00
Mahogany Arm Chairs.....		3			40.00
Mahogany Revolving Chair..		1			25.00
Typewriter Desk, Oak.....		2			85.00
Roll Top Desk, Oak.....		1			50.00
Straight Back Chairs.....		7			49.00
Stools		5			20.00
Oak Table		1			40.00
Small Oak Roll Top Desks..		2			30.00
Carried Forward					\$4,449.00

2364

77 2365

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—OFFICE FURNITURE AND FIXTURES (Cont'd).

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
			Brought Forward	\$4,449.0	
Oak Hat Trees		2		14.0	
Filing Cabinets		8		735.0	
Book Cases		2		80.00	
Petty Cash Tube		1		140.00	
Brass Rail		1		150.00	
Sign		1		40.00	
Lamp Post		1		68.00	
Wax Figures		2		50.00	
Electric Fans		3		72.00	
Fire Extinguishers		4		50.00	
Underwood Duplicator		1		40.00	
Boiler, Bryant		1		135.00	
Total				\$6,023.00	2366

2367

2368 78

THE BARTLETT HAYWARD COMPANY

BALTIMORE, Md.

Building—DISTRIBUTION SYSTEM.

<i>Item</i>	<i>Material</i>	<i>Quan-</i>	<i>Unit</i>	<i>Unit</i>	<i>Total</i>
		<i>ty</i>		<i>Price</i>	<i>Cost</i>
CAST IRON MAINS					
8"	Dia. Pipe	62,929	Feet	\$1.202	\$75,640.66
4"	" "	139,476	"	1.452	202,519.15
6"	" "	83,056	"	2.014	167,274.78
8"	" "	48,944	"	2.673	130,827.31
10"	" "	19,288	"	3.634	70,092.59
12"	" "	9,262	"	4.553	42,169.89
16"	" "	9,928	"	7.183	71,312.82
20"	" "	36	"	9.755	351.18
24"	" "	222	"	13.082	2,904.20
				373.141	\$763,092.58
Piling under 12" Diameter					
Main to College Point:					
25' Piles, 12" Butts.....		500	Piles	20.00	10,000.00
Lumber		48,000	B.M.	135.00	6,380.00
				Total	\$779,472.58

2370

79 2371

**THE BARTLETT HAYWARD COMPANY
BALTIMORE, Md.**

Building—DISTRIBUTION SYSTEM (Cont'd).

Item	Material	Quan-	Unit	Unit	Total
		ty		Price	Cost
STEEL MAINS					
1½"	Diameter Pipe	567	Feet	.58	\$328.86
2"	"	12,621	"	.628	7,925.99
4"	"	218,401	"	1.057	230,849.86
Totals		<u>231,589</u>			<u>\$239,104.71</u>
WELDED H. P. PIPE					
2"	Diameter Pipe	17,676	"	.678	11,984.33
3"	"	7,190	"	.93	6,686.70
4"	"	29,131	"	1.127	32,830.64
Totals		<u>285,586</u>			<u>\$290,606.38</u>

2378

2874 80

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
PAVING					
	Estimated Cost of Paving laid by Gas Company over Mains and Services				\$1,059.81

2875

2876

81 2377

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd.).

Item	Material	Quan-	Unit	Unit	Tot.
		ty	Unit	Price	Cos
HOUSE SERVICES					
¾" Service		570		19.227	\$10,959.
1" "		6,359		20.478	130,219...
1¼" "		358		21.856	7,824.45
1½" "		254		23.129	5,874.77
2" "		101		25.533	2,578.83
4" "		2		54.828	109.66
		7,644			\$157,566.70
BRANCH SERVICES					
¾" Service		2		14.199	28.40
1" "		316		14.980	4,733.68
1¼" "		5		16.108	80.54
		323			\$4,842.62
STUB SERVICES					
1" Service		31		13.603	421.69
Estimated additional cost of services off of 4" Steel Mains, due to use of service clamps	2,622				
Municipal Inspection	374,447	Feet	1.00	2,622.00	
			.027	10,110.07	

2379

2380 82

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

DISTRIBUTION SYSTEM (Cont'd.).

METERS ON DISTRICT.

		<i>Unit Cost of Meter</i>	<i>Total Unit Cost</i>	<i>Total Cost</i>
	Size	<i>Number</i>	<i>Meter Material</i>	
	3-Lt. Regular	1,028	\$8.00	\$1,835
	3-Lt. Prepayment..	502	11.75	1,835
	5-Lt. Regular	5,851	9.60	2,316
	5-Lt. Prepayment..	2,671	13.35	2,316
	10-Lt. Regular	194	12.80	3,447
	10-Lt. Prepayment..	4	16.60	3,447
	20-Lt. Regular	59	21.60	5,145
	30-Lt. "	219	32.00	7,060
	45-Lt. "	120	50.00	7,365
	60-Lt. "	8	64.00	7,526
	80-Lt. "	1	90.00	8,341
	100-Lt. "	12	100.00	12,380
	400-Lt. "	1	400.00	27,467
		10,670		\$152,598.98
2381	Transportation & Setting in Flushing 196 Meters.....	@	\$1,214	237.94
	Setting in Flushing 5491 Meters	@	1.00	5,491.00
	Transportation & Setting in Out-lying Districts 4983 Meters..	@	1.547	7,708.70
	Total Meters on District.....			\$166,036.62

2382

83 2383

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM (Cont'd).

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
METERS IN STOCK					
3 Lt. Prepayment	90		\$11.75	\$1,057.50	
3 Lt. Regular	20		8.00	160.00	
5 Lt. Prepayment	331		13.35	4,418.85	
5 Lt. Regular	127		9.60	1,219.20	
10 Lt. Prepayment	3		16.60	49.80	
10 Lt. Regular	9		12.80	115.20	
20 Lt. Regular	1		21.60	21.60	
30 Lt. Regular	12		32.00	384.00	
45 Lt. Regular	6		50.00	300.00	
100 Lt. Regular	4		100.00	400.00	
Totals	603				2384
				\$8,126.15	

2385

2386 84

THE BARTLETT HAYWARD COMPANY
BALTIMORE, MD.

Building—GAS APPLIANCES & ARC LAMPS.

<i>Item</i>	<i>Material</i>	<i>Quan-</i> <i>tity</i>	<i>Unit</i>	<i>Unit</i> <i>Price</i>	<i>Total</i> <i>Cost</i>
GAS APPLIANCES					
20th Century Cookers.....		3		\$18.50	\$40.50
Wolff Cookers		11		18.50	148.50
Vulcan Junior Cookers		746		16.05	11,973.30
Peerless Junior Cookers....		1,890		20.16	38,120.40
Peerless Cabinet Ranges....		498		39.10	19,471.80
Water Heaters		1,306		12.00	15,672.00
Total					\$85,426.50
ARC LAMPS					
No. 30 Humphrey Lamps...		372		8.53	\$3,173.16

2387

2388

THE BARTLETT HAYWARD COMPANY

BALTIMORE, MD.

Building—DISTRIBUTION SYSTEM.

Item	Material	Quan-	Unit	Unit	Total
		tity		Price	Cost
SUMMARY.					
STREET MAINS					
Cast Iron Maine					\$779,472.58
Steel Mains					290,606.38
Paving					1,059.81
Total					\$1,071,138.77
SERVICES					
House Services					157,566.70
Branch Services					4,842.62
Stub Services					421.69
Additional for Service Clamps					2,622.00
Municipal Inspection					10,110.07
Total					\$175,563.08
METERS					
Meters on District					\$166,036.62
Meter in Stock					8,126.15
Total					\$174,162.77
GAS APPLIANCES					
ARC LAMPS					85,426.50
					3,173.16

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798 MARTIN MORRISON, called as a witness on behalf of the complainant and being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Morrison, you are the Superintendent of the New York & Queens Gas Company works at Flushing?

A. I am.

Q. Where do you live?

A. Flushing, L. I.

Q. Do you live in a dwelling on the premises of the gas company adjacent to the works?

A. I do.

Q. How old are you?

A. Forty-four.

Q. What has been your experience in the gas business? When did you first start to work in that line of business?

A. In 1904 I started at Yonkers with the Westchester Lighting Company, as a fitter's helper.

Q. How long were you with the Westchester Lighting Company?

A. Until April 17, 1916.

Q. Tell briefly the various positions that you held while you were with the Westchester Lighting Company—or first, is the Westchester Lighting Company a gas company?

A. A gas company.

Mr. Neumann: One moment, before you go any further.

The Master: What kind of gas does that company make?

The Witness: Carburetted water gas.

799 Mr. Neumann: May I ask whether Judge Ransom has produced here the daily works sheets reports, or whatever name they are known by, for the years 1918 and 1919?

Mr. Ransom: Some of them are here.

Mr. Newman: 1918 and 1919—I took it up with Mr. Davidson personally yesterday, and he said he would have them in court when this man was on the stand.

Mr. Ransom: 1919 and 1920 are here. If there is any good reason we can get 1918.

Mr. Neumann: There is.

Mr. Ransom: I don't see what 1918 has to do with the issues in this case.

The Master: Go ahead.

Mr. Neumann: May I ask the Master to make a direction with reference to it? You will compel us to cross examine this witness, and part of it will be based on those records.

Mr. Ransom: I do not intend to interrogate this witness with respect to 1918.

The Master: They may have some questions on 1918 as compared with 1919. Mr. Spear, telephone over to send those down.

Mr. Ransom: I think they are up at 15th Street.

The Master: Telephone up and get them right down.

Q. The Westchester Lighting Company makes carburetted water gas?

A. It does.

Q. And did during the 12 years that you were connected with that company?

A. Yes.

Q. Tell the various positions that you held while you were with that company?

800 A. Fitter, indexer, collector—

Q. What do you mean by "indexer"?

A. Indexing consumers' meters.

Q. And collector?

A. Collector.

Q. What were your duties there?

A. Collecting the gas bills from consumers in different districts.

Q. Then what next?

A. Draftsman.

Q. What were your duties there?

A. Drafting in the gas-engineering department at Mt. Vernon.

Q. That is working on the drawings for construction work?

A. Drawings for construction work and street mains.

Q. Then what next?

A. Candlepower and calorimeter inspector; inspector of mains and services; cadet engineer at the Pelham works. Later I became superintendent of the White Plains works for a short period.

Q. What is that? In these various capacities have you made gas yourself?

A. I have.

The Master: Not in all of these capacities?

The Witness: No.

Mr. Ransom: I did not say in all of them.

The Master: You said in these various capacities.

Mr. Ransom: In various of these capacities I should have said.

The Witness: I have.

Q. What if any study have you made of the gas business outside of your practical experience?

801 801 Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I took a 4-years' course of home study offered by the Trustees of the Gas Institute.

Q. That is the American Gas Institute?

A. American Gas Institute. Also attended Yonkers High School during the evening sessions for one year.

Q. As superintendent of the Flushing works are you in direct personal charge of the operation of the works and the manufacture of gas?

A. I am.

Q. Do you devote your entire time to that business?

A. I do.

Q. Are you on the job 24 hours in the day?

A. Exactly.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The records would indicate that.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Are you from time to time called on with respect to matters arising during the evening and night at the plant?

Mr. Neumann: I object to that as incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

802 Q. Now, will you please describe what if anything is done by you with reference to the receipt of coal at the Flushing works?

A. When a cargo of coal arrives I generally go down and look it over—

Mr. Neumann: I move to strike that answer out, "generally go down."

The Master: Motion denied.

Mr. Neumann: Exception.

A. (continued.) I am present when the coal is hauled into the plant. We pay for the coal on the railroad's bill of lading. When the coal has been delivered I notify Mr. Spear of its receipt by signing my name on the back of the invoice.

Q. That is, you usually and generally see the coal at the barge?

A. I do.

Mr. Neumann: One moment. Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And are you present when the coal is brought into the works?

A. I am.

By the Master:

Q. How does it get from the barge to the works?

A. By truck.

Q. Whose trucks?

A. A contractor's.

Q. Who is the contractor?

A. Peace Brothers.

By Mr. Ransom:

Q. What check is kept of the amount of coal received and used at the works?

803 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; improper in form and substance, both.

The Master: Overruled.

Mr. Neumann: Exception.

A. We make monthly periodical inventories of the coal pile by measurement. We also keep track of the coal that is used; that is, we check it against the receipts.

The Master: Do you weigh the coal when it comes in?

The Witness: No.

Q. That is, you make a check of the coal pile monthly by measurement?

A. I do.

Q. You do that yourself?

A. I do.

Q. So that if there were any considerable discrepancies between the amount of coal billed and the amount of coal received your inventory would show it?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. That is a conclusion for the Master to draw from the witness' testimony, not for the witness to testify to.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

By the Master:

Q. You said something about keeping track of the coal used, did you not?

A. Yes.

Q. How do you do that?

804 A. We keep an account of the number of buggies as they are dumped into the machine, and the gas-maker puts it on his sheet, and we add those buggies up each day and compute the weight of coal from those buggies.

Q. How much does a buggy contain?

A. From eleven to thirteen hundred pounds.

Q. Do your buggies vary in size?

A. No, they are all the same size.

Q. Do you weigh each buggy?

A. No.

- Q. How do you say from eleven to thirteen hundred pounds?
A. We have weighed them to check up on the weights.
Q. How do you figure them, 11 or 13?
A. We use 13.
Q. You use 13 as the quantity that goes into the manufacture?
A. Yes.
Q. Why do you do that when some of it runs as low as 11?
A. Using it in that way and checking up with our inventory at the end of the month, our coal pile comes out nearer to what we have used using 1,300 pounds to the buggy.

Mr. Neumann: I move to strike that out, as to how much he used, as a pure guess, based on his conception.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

By Mr. Ransom:

- Q. Do you personally watch the filling of the buggies?
A. Yes.
805 Q. Describe the method by which oil is received and the quantity checked and the quantity reported to Mr. Spear?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, nothing shown yet that he reports any oil to Mr. Spear.

The Master: Overruled.

Mr. Neumann: Exception.

A. The oil is pumped into the tanks at the works from the barge, through a pipe-line leading down to the dock, and we measure the tanks at the time the pumping is started at the barge, and again afterwards, and a report of the receipt of the oil is made to Mr. Spear, as of coal and other materials.

Mr. Neumann: I move to strike the witness' answer out, because he says "we measure." That does not mean anything.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

- Q. What are the methods of measurement used?
A. By a scale on the outside of the tank and by a plumb-bob.
Q. That is, you use both methods of measurement as a check one against the other?

A. We do.

Mr. Neumann: One moment. I object to that. The witness stated that "we measure," he did not say "I measure" at all, and counsel has now said "I measure."

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

806 Q. What is done by you after a cargo of oil has been received and it has been measured in the tanks in the method which you have described?

A. They report to Mr. Spear the receipt of it.

Q. You receive at the works other materials besides coal and oil?

A. Yes, oxide, pipe and fittings, lubricating oils and so forth.

Q. Those are received by you personally?

A. Those are received by me and reported to the management the same as other materials.

Q. And you make a certificate to Mr. Spear of its receipt?

A. I do.

Q. Do you keep a daily manufacturing record?

A. I do.

Q. Of the operations of the company at the works?

A. I do.

Q. Is this record kept on a large sheet covering an entire month?

A. It is.

Q. Are the entries thereon made daily showing the results of operations for each day?

A. They are.

Q. Who makes the entries on this record?

A. The clerk, when I have one. When I have not I do it myself personally.

Q. When the record has been made up, either by yourself or by a clerk, do you personally check the accuracy of the entries and the computations?

A. I do.

Q. That is, you always go over both the computations and the entries?

807 Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial and a conclusion.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: What is your answer, Mr. Morrison?

A. I do.

Q. What is done with this report at the end of the month?

A. It is totaled and sent to Mr. Spear.

Q. Is it certified to by you?

A. It is certified to and signed by me.

By the Master:

Q. How do you determine how much oil is used in the course of a day's manufacture, Mr. Morrison?

A. By measurement, both by tank measurement and meter measurement at the gas machines.

Q. And oil meter?

A. And oil meter.

Q. The amount of oil that is used in the course of a day is determined by those measurements?

A. Yes, sir.

Q. And the amount of gas made in the course of the day is determined by meter measurements of some kind?

A. Meter measurements and holder measurements.

Q. And holder measurements?

A. Yes.

Q. So that you can determine every day the amount of oil used for the quantity of gas produced?

A. Yes, sir.

808 Q. And do you do that every day?

A. Every day.

By Mr. Ransom:

Q. Have you produced in court the monthly report sheets for the months of 1919 and 1920 to date?

A. Yes, sir.

By the Master:

Q. Let me ask you this, Mr. Morrison: You say that you take these buggy quantities at 1,300 pounds, then you check it up with your inventory at the end of the month. What quantity of coal used do you report at the end of the month, the amount shown as the result of your inventories or the amount of the computation of the buggies?

A. The computation of the buggies.

Q. Suppose that is less than the amount shown by your inventory check, do you still stick to your buggies?

A. No, we change the weight of the buggies to meet that.

Q. Suppose it is more than indicated for your inventory check?

A. Then we would increase the weight of the buggies.

Q. Then you take the result of your inventory check rather than your 1,300 pounds per buggy, don't you, as the total used in the course of a month?

A. In that way, yes.

Q. What?

A. In that way, yes.

809 Q. In what way don't you? What I am trying to get at is this, Mr. Morrison: You use a certain quantity of coal in the course of a month, do you not?

A. Yes.

Q. How do you determine that?

A. By the number of buggies and the weight per buggy.

Q. Suppose the number of buggies in the course of a month indicates that you have used 500 tons.

A. Yes.

Q. When you check it back with your inventory you found you only used 400 tons?

A. Well, that never happens; we are very much closer than that.

Q. What?

A. We are within ten tons of our inventory.

Q. Always?

A. Most always.

Q. Then you would stand by your buggies' weights?

A. We would stand by our buggy weights.

Q. And you disregard the variance of the ten tons?

A. Yes. Take the standard weight of the buggy against the tape measurement of the coal pile.

Q. Then you rely on your buggy weights of 1,300 pounds?

A. Yes.

By Mr. Ransom:

Q. You from time to time measure and have measured the weight of the quantity of coal contained in one of these standard buggies?

A. Yes, we have.

Mr. Ransom: You may cross-examine.

810 Mr. Neumann: Where are your exhibits? You identified them and you have not introduced them yet.

Mr. Ransom: You may cross-examine.

Mr. Neumann: The position here is this: He puts a witness on the stand to identify certain records, and then wants us to introduce them in evidence. I think that is manifestly unfair.

Mr. Ransom: I do not want you to offer them in evidence.

Mr. Neumann: This witness has stated that he makes these records. The records are part of this case and they ought to be introduced by the complainant.

The Master: The witness' testimony in substance is that he is in charge of the plant at Flushing, that they use coal and oil; that he measured the amount of coal and oil used and reported it to the management.

Mr. Neumann: And makes a daily record of it.

The Master: And keeps a daily record of it.

Mr. Neumann: Yes, and those daily records are here in court.

The Master: Yes. Counsel for the complainant does not see fit to offer them as part of his case. If there is anything you want to cross-examine this witness about, I will take it.

Cross-examination.

By Mr. Neumann:

Q. Where did you say you resided, Mr. Morrison?

811 The Master: I will not allow a question of that kind.

Mr. Neumann: On what ground, please?

The Master: On the ground that he has already told us he lives at this house at the Flushing works, at Flushing, Long Island.

Mr. Neumann: No, he said adjacent to the works. It is not adjacent to the works, it is right in the works.

Mr. Ransom: He said he lived in a frame dwelling on the premises of the company.

The Master: I will not allow the question. I do not care whether Mr. Morrison lives in the gas holder or down in Douglaston somewhere.

Mr. Neumann: I am going to try to make my record, if the Court pleases.

Q. The dwelling that you reside in is within the confines of the works?

The Master: The question is not allowed. The Master, using his discretion, believes that it is a useless waste of time.

Mr. Neumann: Exception.

Q. Immediately opposite from your works is there any vacant land?

A. There is.

Mr. Ransom: Objected to as immaterial.

The Master: The witness has answered it. If the witness had not answered it so quickly, the Master would have ruled it out as being a useless question. It is already in evidence. There is lots of vacant land around there.

Q. When you were at the Yonkers High School what course did you take there so far as gas making was concerned?

A. None.

812 Q. You testified that the coal is trucked in buggies, did you not?

A. From the coal pile to the generating floor.

Q. How is the coal taken from the barge?

A. By auto trucks and horse-drawn trucks.

Q. And are those the buggies that you were talking of?

A. No.

Q. Those are different?

A. They are different.

Q. How many buggies do you generally consider necessary to truck a day's supply of coal?

A. Where from, the boats to the works, or the coal pile to the generating floor?

Q. As I understood your testimony, and I wish you would clear it up—

A. I will if your answer is clear—your question is clear.

Q. Yes, but as I understood your testimony it related to the buggies taking the coal from the barge. Now you say it is automobile trucks?

A. I did not say anything about buggies taking the coal from the barge.

Q. Take it from the coal pile to the works, how many buggy loads do you estimate are required in a given day?

A. According to the make.

Q. Take your maximum make.

A. About thirty buggies from the coal pile to the generating floor.

Q. Now take your minimum make.

A. That may run twenty-twenty or twenty-five.

Q. The fair average would be about twenty-five for a fair average day's send-out?

A. Twenty-five or thirty.

813 Q. You just testified that thirty was the maximum, did you not?

A. Yes.

Q. Then how do you make thirty the average?

A. I say twenty-five to thirty.

Q. In a general way will you just describe these buggies?

A. A large steel buggy on two wheels that has a funnel at the end. As they tip this buggy, it is dumped into the generator.

Q. It runs on tracks?

A. We run them, not on tracks, but on channel irons, from the bin to the elevator.

Q. What is the motive power?

A. Man.

Q. How many?

A. Two. Two from the coal bin to the elevator, one after they get on the floor or where it is level pulling.

Mr. Neumann: May I have those work sheets reports?

(The Master hands counsel papers.)

Q. Mr. Morrison, I now show you paper marked Daily Record of Manufacture of New York & Queens Gas Company for the month of January, 1919, which was produced by counsel for the complainant, and I will ask you to state whether that was the record that you had in mind when you testified as to the materials received and used (indicating)?

A. It is.

Q. And is this signature "M. Morrison, Works Superintendent" your signature?

A. It is.

Q. You testified, did you not, that this was correct?

814 A. I did.

Q. You testified that you had added up the columns and found them correct?

A. I did.

Q. I now direct your attention to the column marked "Oil Used," the figure in red *rik* at the bottom of that column; 146,964 is intended to be the sum total of that column, is it not?

A. It is.

Q. Will you add that and see if it is not incorrect, or I will say to the witness fairly that we have added it up and it is 149,964.

The Master: What does he make it?

Mr. Neumann: 146,964.

The Master: Add it up, Mr. Morrison, and see what you make it. What is the answer, Mr. Morrison?

A. (Making computation.) 149,964.

By the Master:

Q. 149,964 is right?

A. Yes.

Q. So there is an error there?

A. There is an error.

By Mr. Neumann:

Q. An error of 3,000?

A. Right.

The Master: What is that, in oil, Mr. Neumann?

Mr. Neumann: Yes.

Q. Directing your attention to the bottom here, to the words "Used in Manufacture," you have copied down this incorrect total of 146,964?

A. Yes.

Q. Whoever did it. And that figure there should be
815 149,964?

The Master: What was the total gas manufactured that month?

Mr. Neumann: I do not think that has anything to do with it, if the Court pleases, at the present time.

The Master: I would like to know.

Mr. Neumann: What I am trying to develop at this time is this fact that the record is incorrect.

The Master: How much gas was manufactured during the month?

The Witness: 32,903,000.

Mr. Neumann: If the Master please, I object to that.

The Master: How much?

The Witness: 32,903,000.

The Master: What difference would it make, the 3,000 gallons of oil, in the quantity of oil used per thousand?

The Witness: Very little.

Mr. Neumann: I object to that.

Q. Mr. Morrison, I will direct your attention to the 18th of January. Part of this 3,000 is accounted for by the fact that you have made an error there of 1,000, or whoever made this record. Do you want to verify that? I have verified it.

The Master: Ask your question, Mr. Neumann. Is that correct, on the 18th?

The Witness: On the 18th.

The Master: Is that correct?

The Witness: That is correct.

Q. And similarly 2,000 is accounted for on the 22nd?

A. Right.

Q. Which is correct, the quantity on hand or the quantity used on the 15th, or taking, for instance, the 16th?

816 A. What was that question, now?

Q. Which is correct, the quantity on hand on the 16th, or the quantity used on the 15th?

A. According to the record here they are both correct.

Q. The next day there is an error, two days later there is an error there, is there not?

A. On the 18th, yes.

Q. Yes; of a thousand gallons. Then, Mr. Morrison, this record is the record that you testified you handed to Mr. Spear, is it not?

A. Yes.

Q. You do not know what becomes of it after that, do you?

A. No.

Q. This record also contains a record of the City's best at the works?

A. It does.

Mr. Ransom: Objected to.

The Master: At the works?

The Witness: At the works? No.

Q. Is it at the works, or is it at the testing station?

A. At the testing station.

Q. Yes. And this record also indicates what machines were in operation and what machines were not in operation, does it not?

A. No, it shows the machines that were in operation.

Q. I mean this record would indicate what machines were and what machines were not in operation?

A. No, what machines were in operation.

The Master: Well, by exclusion it would show what machines were not?

817 The Witness: Yes, that column shows the machines that were running.

Q. The column marked "Machine" will indicate which were running?

A. Right.

Q. Take, for example, January 1st, the column "Machine" would indicate that No. 3 machine was in operation?

A. Right.

Q. Does that indicate that machines Nos. 1 and 2 were not in operation on that day?

A. It would.

Q. And that would be through the entire column?

A. Yes.

Q. So that where the column indicates that machines 1 and 2 were in operation, machine No. 3 was idle?

A. Right.

Mr. Neumann: Now I offer this sheet in evidence.

The Master: Mark it.

Marked Defendants' Exhibit A in evidence.

Q. Directing your attention now, Mr. Morrison, to Defendants' Exhibit A, column here marked "Index of station meters, 7 A. M." columns Nos. 1, 2 and 3, will you please state what those columns indicate?

A. The index of the station meter on the date that they are read, at seven o'clock.

Q. How many meters have you?

A. Three.

Q. And where there are no figures in the column it would indicate there was no meter reading at that time?

A. Right.

818 Q. Are there meters attached to each machine?

A. What kind of a machine?

Mr. Tobin: What is that?

The Witness: What kind of meter?

Q. This index of station meters.

A. No.

Q. What are they attached to, these meters?

A. Gas meters.

Q. What would that indicate where there are no figures in the column under the particular numbers?

A. It would indicate that the meter is not there.

Q. You mean taken out?

A. Taken out for repairs.

Q. At that time there was not any indexing?

A. Right on that one meter.

By the Master:

Q. Where would it be shown? In other words, would the other meters function while that was out?

A. Yes.

Q. Would the gas going through show on other meters instead of the one taken out?

A. The gas passes through all three meters, and if one is taken out the gas that is registered passes through the two.

By Mr. Neumann:

Q. I now show you, Mr. Morrison, daily record of manufacture of the New York & Queens Gas Company for the month of February, 1919, which was produced by counsel for the complainant, and will ask you to state whether that is one of the papers either kept by you or under your direction?

A. It is.

Q. And the signature thereon, "M. Morrison, Works Superintendent," is your signature?

819 A. It is.

Q. And that appears immediately under the words "I certify the figures on this report to be correct"?

A. Yes.

Q. And you believe this report to be correct?

A. Yes.

Q. Now I direct your attention to February 2nd and February 3rd, to the column marked "Gallons Received," and I will ask you to follow me on these figures. February 2nd, on hand 48,089, is that correct?

A. That is correct.

Q. Less used on February 2nd, 5,067?

A. Right.

Q. That is correct?

A. It is correct.

Q. The balance is 43,022, is that correct?

A. Yes.

Q. That was the balance on hand on the 3rd, was it not?

A. Yes.

Q. On that day you received 118,539?

A. Right.

Q. Making a total of 161,561?

A. (Making computation.) 161,561 is right.

Q. And you used on the 3rd 2,955?

A. 2,955.

Q. That would leave a balance of how many, or how much?

A. (Making computation.) 158,606.

Q. What is the figure that you have there?

A. 158,378.

Q. That is a difference of 228?

A. Right.

Q. Your figure, then, as the balance on hand on the 4th at 7 A.M. is incorrect?

820 A. According to that it is.

Q. Is there any doubt in your mind that your figure is incorrect?

A. Well, the figures are correct there.

Q. The figures are correct on the sheet?

A. Yes.

Q. Despite what I have shown to the contrary?

A. Yes.

Q. Explain, then, how you figure out 158,606 should be on hand on the 4th?

A. Wait a minute, this figure is correct, 158,606.

Q. That is correct?

A. It is correct.

Q. And there is a difference of 228?

A. Yes.

Mr. Neumann: These are all on the question of their correctness that is what I am endeavoring to demonstrate.

The Master: I am letting you show it. I do not see how it will help us any.

Mr. Neumann: Here is a man who has sworn these figures are correct and they go into the books.

The Master: And the other answer to them is that except for the errors you show you are putting them up.

Mr. Neumann: All right, I am taking a chance on that.

Mr. Ransom: And Mr. Teele's exhibits are made up on a basis which this does not in any way challenge.

Mr. Neumann: Mr. Teele says that he took these and checked them. If Mr. Teele's figures are wrong, this is wrong.

The Master: I am indicating to you, Mr. Neumann, the 821 impression that you are making on my mind, that the moment you prove that error on the sheet you prove up the sheet. You show the amount of coal used and the quantity of oil used. I think you are helping the complainant's case.

Mr. Neumann: And in view of the state of the record I have offered it, and I do not think that any reviewing court will determine from that that it had been proven.

The Master: Very well, go ahead.

Mr. Neumann: These are intended solely and wholly to impeach this witness' testimony.

The Master: But you are making other evidence while you are doing it.

Q. Mr. Morrison, let me direct your attention to this, the entry dated the 3rd, the "Gallons Received" originally indicated 118,311, and there was a line drawn through that; is that correct?

A. Yes.

Q. And thereafter there was written over it 118,539; is that correct?

A. That is correct.

Q. Now bringing you down again to the bottom here, under the word "Bought," you have the figure 118,311; is that correct?

A. That is correct.

Q. And in the next column 118,539?

A. That is correct.

Q. Which amount did you get, 118,311 or 118,539?

A. 118,539.

The Master: Isn't that the variance that you pointed out before?

The Witness: Yes.

822 Mr. Neumann: That makes the difference. It shows that the records are not correctly kept.

Mr. Ransom: It shows that errors are caught and that the records are correct.

Mr. Neumann: That will be determined later on.

Now I offer this sheet in evidence.

The Master: It is received. Mark it.

Marked Defendants' Exhibit B.

The Master: Don't you see, Mr. Neumann, that the minute you point out this one error out of the great mass of figures on this February sheet, you leave an impression in my mind, that must be there, that if there were any other errors on it you would have pointed them out?

Mr. Neumann: Well, the fact is that we have not had time to check all these figures up, by reason of the fact, as your Honor well knows, that Mr. Frank, who was working on these, left us. I am trying to do the best I can, as I indicated last week, to be ready and be prepared on these cross examinations.

The Master: I know, but Mr. Frank has taken the last—you are pointing out errors in the last few columns here, which would indicate to me that there were no errors in the preceding columns.

Mr. Tobin: That does not follow, your Honor.

The Master: That is the impression I get.

Mr. Tobin: We cannot help what impression you get.

823 Mr. Neumann: The mere fact that they declined to introduce these in evidence speaks volumes for the whole thing.

The Master: Yes, it speaks volumes for the cleverness with which it was done, putting the burden on you to put them in, making it your evidence, not theirs.

Mr. Neumann: And no court reviewing it will take it to be our evidence.

The Master: Proceed.

Q. How do you ascertain the quantities on hand at 7 a. m., Mr. Morrison?

A. By measurement.

Q. What do you mean by that?

A. By a scale on the outside of the tank or by plumb-line.

Q. Who takes those measurements?

A. The engineer, as a rule. Sometimes I take them myself.

Q. Who is the engineer?

A. One of three; whoever happens to be on the shift.

Q. I now direct your attention to Daily Record of Manufacture of the New York & Queens Gas Company for the Month of June, 1919, after the column "Oil used." There is a red ink figure there of 500?

A. That is right.

Q. Which is immediately underneath a red ink figure of 110,264?

A. Yes.

Q. And then there is a red ink figure of 110,764?

A. That is right.

Q. That is an addition of 500 gallons?

A. Right.

Q. To the oil used, is it not?

A. It is.

824 Q. The column "Oil Used" is intended to indicate the daily quantity of oil used, is it not?

A. It is.

Q. So that at the end of the month you have added on 500 gallons to what had already been used; is that correct?

A. We did; that is right.

Q. Why was that?

A. To make up some of the discrepancies we had.

Q. What do you mean by discrepancies?

A. Discrepancies that appear in the oil received and the oil that was billed for.

Q. And there was 500 gallons discrepancy that month?

A. It may not have been in that month.

Q. Well, it is so from the record, is it not?

A. Yes.

Mr. Neumann: I offer that in evidence.

Marked Defendants' Exhibit C.

Q. I direct your attention, Mr. Morrison, to Daily Record of Manufacture of the New York & Queens Gas Company for the month of November, 1919, and particularly to the column "Oil Used," the first total in red ink there is 152,647; is that right?

A. That is right.

Q. And there is added in red figures 2,000?

A. Right.

Q. Making a total of 154,647?

A. Right.

Q. Is that correct?

A. That is correct.

Q. Will you please explain that?

Mr. Tobin: 2,000 gallons.

A. 2,000 gallons, the same as on the previous 500 gallons.

825 Q. What is that?

A. A discrepancy between the bill of lading and the oil received.

Q. The column "Oil Used" indicates the daily oil used each day, does it not?

A. It does.

Mr. Neumann: I offer that sheet in evidence.

The Master: Mark it.

Marked Defendants' Exhibit D.

Q. Mr. Morrison, I now show you Daily Record of Manufacture of the New York & Queens Gas Company for the month of December, 1919, produced by counsel for the complainant, and direct your attention to the column "Oil Used." The first total for the entire month reads 181,736, in red ink, does it not?

A. It does.

Q. And then there is added in red figures 1,000?

A. Right.

Q. And then the total 182,736?

A. Right.

Q. Will you explain that 1,000 red ink addition?

A. For the same reason as the others, a difference between the bill of lading and the oil received.

Mr. Neumann: I offer that sheet in evidence.

Marked Defendants' Exhibit E.

Q. I now show you Daily Record of Manufacture for the Month of July, 1919, and direct your attention to the 3rd of that month. By the way, Mr. Morrison, the figures there would indicate that they have been erased and changed; at some time or other, I do not mean just now?

826 A. Yes.

Q. Directing your attention to the 3rd, the quantity of oil on hand at 7 a. m. was how much?

A. 193,065.

Q. During the preceding day there must have been some amount higher than that on hand, was there not?

A. We received some the day previous, which would indicate a higher amount on hand.

Q. Were you here the day Mr. Alrich testified to your oil storage capacity as of 180,000 gallons?

A. I believe I was, yes.

Q. How do you reconcile the fact that you had more than 193,000 gallons on hand at one time?

A. We figure that the pipe line from the dock to the works contains a certain amount of oil, which they are unable to pump out as each barge comes in.

Q. How long a pipe line is that?

A. About a half a mile, I should think.

Q. And do you think that would contain 13,000 gallons?

A. It might. I don't know anything about the figures.

Q. You don't know anything about it, do you?

A. No.

Mr. Neumann: Now, that is as far as I can go, unless the 1918 records are here.

Mr. Ransom: The 1918 records are here.

The Master: Hand them to Mr. Neumann.

Q. I now show you daily record of manufacture of the New York & Queens Gas Company for the month of January, 1918. Do you recognize that as one of the records that you have marked as correct?

827 Mr. Ransom: Objected to as immaterial.

The Master: Objection overruled.

A. I do.

Q. That is one of the records that you keep daily?

A. It is.

Q. And the signature "M. Morrison, Works Superintendent" over the words, "I certify the figures in this report to be correct," is your certification?

A. Yes.

Q. Referred to in your testimony?

A. It is.

Q. Now, I direct attention to the column, "Boiler Fuel, Soft Coal Tons," the total of that column is 615,120, is that correct?

Mr. Ransom: Objected to as incompetent, immaterial and irrelevant, not within any issues of this case, not within the scope of cross-examination of the witness, he has not been interrogated regarding January, 1918, or any part of 1918.

The Master: I will take it.

Mr. Ransom: Exception.

A. Yes.

Q. Now, where there are no figures set out in your column opposite each day, it would indicate that there was no material used on that day, would it not?

A. It would indicate that, yes.

Q. Well, now, I direct your attention to the 30th, 31st and apparently the next one is the 1st, being the 1st of February; those three days, apparently, there was no boiler fuel used?

A. Apparently.

828 Q. Now, I direct your attention to the bottom of this exhibit, "Used in Manufacture."

Mr. Ransom: That is not an exhibit.

Mr. Neumann: Well, this paper.

Mr. Ransom: Objected to as not within the issues of this case.

The Master: Overruled.

Q. Alongside of the words, "Used in Manufacture" there is the amount 426,960?

A. Yes.

Q. Well, should not that amount agree with 615,120?

A. Yes, plus the dust used. Go over here and you will see a set of figures there covering those three days.

Q. So that on those three days you used dust?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. Where did you get that dust from?

A. Generator screenings.

Q. Now, how do you take your inventory of coal?

A. By measurment.

Q. How?

A. Measure it with a steel tape.

Q. When?

A. Around the first of the month.

Q. How do you arrive at the daily amount on hand?

A. That is brought down from a sheet each day, on a sheet each day.

Q. So that if these figures here are incorrect, there would be some discrepancy, wouldn't there?

A. We catch them at the end of the month.

Q. Yes, but you would not catch them until the end of the month?

A. If I had time to look it over, and keep my eye on the
829 coal pile during the month.

Q. But during the month you have no means of definitely telling whether these figures on this sheet are correct or not?

A. Only from the sheet itself.

Q. Only from the sheet itself?

A. Yes.

Q. Mr. Morrison, I now show you Daily Record of Manufacture of New York & Queens Gas Company for the month of February, 1918, and direct your attention to the column, "Gas Oil Used." Your total there is how much?

A. 121,447.

Q. There is apparently an adjustment there in red ink figures?

A. Of 1,000 gallons.

Q. Yes. The total amount above that is 120,447?

A. That is right.

Q. Now, will you please study that column and see if you find you have not made a mistake in that figure of 124,447?

The Master. What do you say is the fact?

Mr. Neumann. 120,495—50 gallons and then a thousand.

The Master. Well, we will take that and admit that there is that error. I am not going to waste time checking it.

Mr. Neumann. The sheet of March, 1918.

The Master. What is the error in March, 1918?

Mr. Neumann. The error in March, 1918, in dust used, their records indicate, was 708,700, and the correct figure is 508,700.

The Master. Just show that to the witness.

830 Mr. Ransom. This is all over my objection.

The Master. Yes. I am going to sustain the objection in a minute. I just want to let Mr. Neumann develop his theory here. Is that in error?

The Witness. That is in error.

The Master. An error of how much?

The Witness. 200,000 pounds.

The Master. How could that error get by to such an extent? Let's understand something about it. How does a big error like that creep in?

The Witness. Due to the labor conditions and other troubles up at the plant, I did not check these underlying figures here but checked the summaries and took the clerk's figures here.

The Master. Well, 200,000 pounds makes a good deal of difference in the cost.

The Witness. It does, yes, but we catch that on the measurement of the coal pile.

The Master. Well, how could it? It shows up there, does it? Does the error show on there?

The Witness. No, the error does not show here, but the error is gradually taken up, so that it is taken care of as we go on.

Mr. Ransom. What month was that?

Mr. Neumann: I move to strike out that last answer as a mere conclusion.

The Master: Yes, I will grant that motion.

Mr. Ransom: Exception.

Mr. Neumann: Now, I want the next one, April, 1918.

Q. I show you the sheet for the month of April, 1918, and direct your attention to "Oil Used."

831 The Master: What is the error there?

Mr. Neumann: There is an adjustment at the end of a month of a thousand gallons.

The Master: I suppose that is the same kind of an adjustment we have had before, Mr. Morrison?

The Witness: Exactly.

Q. The same is true of July and the same is true of September, 1918?

The Master: I will take his statement. These adjustments are always in various instances the same.

The Witness: Yes.

Mr. Neumann: There is something else I would like explained here, perhaps Mr. Morrison can explain it to us.

Q. You said that you took the coal dust from the coal, did you not? Did I understand you to say that?

A. I said we took it from the coal, yes, where screened, the screenings.

Q. Yes, and then you used it?

A. Yes.

Q. Now, from June to November, 1918, your records would indicate that there was no dust transferred from the generator coal. Now, where did you get your dust from for the months of June to November, 1918?

A. What is the question again, now?

(Question read by the stenographer.)

A. From the generator coal pile.

Q. From the month of June to November, 1918?

A. Yes.

Q. Well, now will you just indicate that to me on this paper, daily record of manufacture for the month of June, 1918, 832 that is the dust used, is it?

A. Yes.

Q. But there is nothing there to indicate where you got it from?

A. No, there is not.

Q. It is indicated on the other ones, isn't it, or you got it from the generator coal?

A. Well, dust, in a general term, is from the generator coal; that is what that heading implies.

Q. The point I am trying to get at is, Mr. Morrison, in the other reports you indicate that the dust came from the generator coal,

but in this from June to November you did not so indicate. Take, "transferred from generator coal," there is a cipher there, isn't there?

A. Yes.

Q. Well, now, take the whole six months, or whatever these sheets are, from June to November?

A. That is right, nothing indicated there.

Q. Where did you get the coal dust from that you used?

A. From the generator coal.

Q. But you did not indicate it on these sheets?

A. No.

Mr. Ransom: I object to the line of inquiry. This counsel for the Commission is dragging back into the conditions of 1918 when every one knows what those conditions were, not within the issues of this year.

The Master: Well, I will let him answer.

Q. But in previous months you did indicate that you got the coal dust from the generator coal?

A. In previous months?

833 Q. Yes, of that year. Do you want to look at them?

A. Yes.

The Master: You did in subsequent months, did you?

Mr. Neumann: Did not in any subsequent month.

A. Under the heading of buckwheat coal, I think you will find—

Q. (Interrupting.) You are speaking now of January, 1918?

A. Yes.

Q. Yes?

A. You apply that to the buckwheat column.

Q. Apply that to the buckwheat column. Did you do that in June, 1918?

A. Yes. It gives the total of buckwheat used 39,711; we put it under the head of "Buckwheat."

Q. Well, now, how about dust 60,700 in June, 1918, where is that accounted for, 60,700 pounds?

A. That is not indicated here.

Q. What is that?

A. That is not indicated here.

Q. And the same is true of July, August, September, October and November is it not?

A. Yes.

Q. And that is different than it was in the other months of 1918 and 1919, is that true?

A. That is true.

Mr. Tobin: We would like to resume with this witness after lunch, if we may.

The Master: I thought Mr. Neumann had something on his mind he wanted to get off.

Mr. Neumann: One minute. Have you Exhibits 58 and 59?

834 The Master: Well, we will take it up after lunch.

Recess.

Afternoon Session.

MARTIN MORRISON, resumed.

Cross-examination continued:

Mr. Neumann: Have you here your manufacturer's book that has been introduced in evidence? I have forgotten what the number of it is. It is a gray book. You introduced it in evidence yourself.

Mr. Ransom: You mean the mains record?

Mr. Neumann: The mains record—is that it? Let me have that.

Mr. Ransom: This witness has not been interrogated regarding anything on the mains record.

By Mr. Neumann:

Q. Mr. Morrison, you have described the method whereby the oil is pumped into the holder from the barges?

A. Yes.

Q. You said it was through a pipe line?

A. Yes.

Q. The barges come right alongside of the dock?

A. They do.

Q. And then you couple on a flexible hose to your pipe?

A. That is right.

835 Q. What is the size of that pipe, I mean the diameter?

A. Six inches.

Q. A six-inch pipe?

A. Right.

Q. Now, you supply Douglaston with gas, do you not, your company?

Q. Yes.

Q. Do you recall when the extension to Douglaston was built when it was commenced and when it was completed?

Mr. Ransom: Objected to as not cross-examination of this witness and not in his department.

Mr. Neumann: He is superintendent of the works.

Mr. Ransom: Mr. Spear, who is the Vice-President and General Manager of the company, and who has testified regarding the Douglaston extension, will be on the stand in a few moments.

The Master: What is the purpose?

Mr. Neumann: Why, the purpose of it is, I want to get on the record the date when the Douglaston extension was started and when it was completed.

Mr. Ransom: That assumes that it is completed.

The Master: I will sustain the objection that it is not proper cross-examination.

Mr. Neumann: I have not finished yet, if the Court please. For this reason: There is a particular question affecting this Douglaston extension—

The Master: What is it?

836 Mr. Neumann: And that is with reference to the time when they commenced to build it with reference to the date of the order.

The Master: What has that to do with this case?

Mr. Neumann: It has this to do with this case, that they cannot delay the extension for five years and then charge the consumers with the price that now exists, or existed at that time, of all these things. That is the point I am trying to drive at.

The Master: The objection is sustained as not cross-examination. It is new matter that you can prove in some other way.

Mr. Neumann: Exception.

Q. I now show you Complainant's Exhibit- 58 and 59. Have you ever seen them before?

A. No.

Q. Did you have anything to do with the preparation of them?

A. No.

Mr. Neumann: Now, if the Court please, my position is this, as I have stated before: Mr. Frank, who has prepared a lot of data on this, has left us. I have a new man there, and I am not able to proceed with this witness at the present time. In view of the Master's criticism that he would assume that every other item was correct by reason of the fact that we pointed out certain errors, I think it is only fair to us that we should have a further opportunity to check up and go over the work that Mr. Frank left undone. I would like to have about a week or ten days for some one to go over these records for me, at which time I would conclude 837 whether there would be any further questions of Mr. Morrison on my part. I think I have shown that I have tried to be diligent.

The Master: Well, have you any objection to suspending this cross-examination?

Mr. Ransom: I do not see any reason for suspending it. They have had access to these records now for over a year. They did their first work on the records of this company in preparation for this case late in February or early in March, 1919. That is considerably over a year ago. All of these records were placed at their disposal then, and they examined such of them as they wished at that time. Mr. Frank, it is true, as I understand it, has resigned within a few days, but I judge from the development of the morning that he has done a very large quantity of work upon these manufacturing records. I think that the matter might be left at least that if any very substantial and sufficient reason appeared to your Honor later that they might have the right to recall Mr. Morrison but I am about to close the complainant's case, and I do not want that closing delayed by any such application as Mr. Neumann has now made.

The Master: Have you anything to ask, Mr. Tobin?

Mr. Tobin: I have, and I also urge the same thing.

The Master: Go ahead and ask anything that you are prepared on now.

Mr. Neumann: Will your Honor pass on my application later, then?

The Master: Yes.

838 Mr. Tobin: If the Master please, I have had no opportunity to make a real analysis of these daily record sheets.

By Mr. Tobin:

Q. Mr. Morrison, you stated that the coal is trucked or brought from the barges to the storage bins or piles on the complainant's premises?

A. Yes, by auto trucks and horse-drawn trucks.

Q. Is that cared for by a particular contract?

A. It is.

Q. Is the contract made for the period of a year, for a month's period, or just how is that arrangement made?

A. I don't know.

Q. In whose charge would that be?

A. Mr. Spear.

Q. Mr. Spear would have entire charge of that contract?

A. He would.

Q. Both as to the arrangements made and as to the price to be paid?

A. He would.

Q. What is the title of the person or employee who checks the coal used at the works?

A. The coal used in the generator?

Q. Yes.

A. I do.

Q. Yourself personally?

A. Myself personally.

Q. Will you indicate just how you check the coal at the works, that is, as to the time of day?

Mr. Ransom: I object to that on the ground that it has been fully covered.

Mr. Tobin: It is not covered at all.

The Master: Objection overruled.

Mr. Ransom: Exception.

839 A. In the morning when we are making up our work sheet for the day previous we add up the number of barrows or buggies that appear on the gas-maker's sheet, and thereby we get our weight used the day previous.

Q. I have in mind particularly the coal as it comes into the plant from these wagons and automobile trucks. As you said before, they are brought over from the barge to the works by trucks. Who checks it as it is received there?

A. There is no check on it as it is received.

Q. No check on it as it is received at the plant?

A. No.

Q. So that there is no check on the coal used until it goes into the manufacture of gas, until it actually goes into the manufacture of gas?

A. Other than the monthly periodical measurement of the coal pockets.

Q. Who makes that?

A. I do.

Q. Yourself personally?

A. Yes.

Q. And that is noted where?

A. I make a memorandum. Those memorandums are not kept.

Q. Are they here, are they put down on any report?

A. Yes.

Q. Are they on these?

A. The measurements will not appear in there, no.

Q. They will not?

A. No.

Q. How many buggies—you stated about 20 to 25 buggies of coal used each day in the manufacture of gas?

A. Yes.

840 Q. Did I also understand you to have said that you personally watch the filling of those buggies?

A. At times, yes.

Q. Is that part of your task, or your job at this plant, to watch these buggies as they are filled?

A. It is part of my work, yes.

Q. How much time would it take to fill a buggy?

A. One man about 15 minutes.

Q. And you would be right there present when they were being filled?

A. Not the entire time, I might not, but I see the buggies as they go on the elevator and on to the generator floor.

Q. All the buggies?

A. No, not all.

Q. Well, how many of them?

A. Well, I might observe a dozen a day.

Q. So you do not really know whether they contain 1,300 pounds of coal, or 1,200 pounds of coal or 1,000 pounds of coal?

A. I would know that by the amount of coal that is on the buggy from previous weights that I have taken.

Q. It would simply be mere guesswork, would it not?

A. It would—a pretty good guess, though.

Mr. Tobin: I ask that the last part of the answer be stricken out.

The Master: Motion denied.

Mr. Tobin: Exception.

Q. Does the company keep a record of tests of the gas each day?

A. Where?

Q. At the works?

A. Yes.

841 Q. Where is that record made a part of the records of the office?

A. It is on this sheet, Works Candlepower.

Q. On the sheets which are known as Daily Records of Manufacture?

A. It is on here; also on a separate candlepower sheet that we maintain at the works.

Q. Referring particularly to the Daily Record of Manufacture for the month of March, 1919—Is that your signature, Mr. Morrison?

A. Yes.

Q. Do you identify this as a daily record sheet for the month of March, 1919?

A. Yes.

Mr. Tobin: I offer that in evidence.

The Master: You can offer all these sheets in evidence. I don't think the gas company will object.

Sheet received in evidence, marked Defendant's Exhibit F.

Q. Does the City make tests of the gas each day?

Mr. Ransom: I object to that as not within the sphere of this witness' duties or experience.

The Master: I will allow that question.

Mr. Ransom: Exception.

A. Yes.

Q. Referring to Defendants' Exhibit F, in what is known as the Remarks column—will you tell us just what these headings are?

A. Yes, City Test and Time of Test.

Q. How do these reports of the City tests come to you?

Mr. Ransom: I object to that as immaterial and incompetent and not the proper method of proving City tests.

842 The Master: I will allow it.

Mr. Ransom: Exception.

A. By telephone from the office. The office receives a card from the City inspector.

Q. The office receives a card?

A. Yes.

Q. Who is that card handed to?

A. Mr. Spear's secretary, Miss Mold.

Q. Who places it upon this record?

A. The works clerk, or I do if we haven't got a clerk.

Q. Can you tell why it is that for several of the days—take on the 2d of March, on the 9th, on the 16th, on the 23d and 30th there is no record?

Mr. Ransom: I object to that as immaterial.

The Master: Objection overruled.

A. They are Sundays.

Q. Will you kindly tell us from this record as to what the test show on March 3rd.

Mr. Ransom: I object to that as incompetent and not the method of proving any city tests, and not within the scope of this witness cross examination.

The Master: I will overrule that objection.

Mr. Ransom: If the paper has any force at all, it is in evidence as a defendants' exhibit and not as a complainant's exhibit.

The Master: I will overrule that objection.

Mr. Ransom: Exception.

A. 20.89.

Q. And on the 19th of March?

A. 20.66.

The Master: I am not going to permit this as to every day. He has already answered that. Go on to the next question.

843 Mr. Ransom: It is the worst part of hearsay as a method of proving city tests.

Q. On the 24th—

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Tobin: If the Court please—

The Master: You have got the paper in evidence. You are simply having him read what appears on the paper. I thought you had some other question to follow up. If all you want to do is to bring out what the record shows, the exhibit shows it.

Q. I show you daily record of manufacture for the month of April 1919. Is that certified to by you as works superintendent?

A. It is.

Mr. Tobin: I offer that in evidence.

Paper received in evidence and marked Defendants' Exhibit G.

Mr. Tobin: I offer in evidence daily record of manufacture for the month of July, 1919.

Paper received in evidence and marked Defendants' exhibit H.

Q. Taking this Exhibit H for July, 1919, Mr. Morrison, can you tell us as speedily as you can the exact meaning of "Index to Station Meters," 7 A. M., Nos. 1, 2 and 3?"

A. That is the index of the station meter taken at seven o'clock in the morning, whatever day it might be.

Q. No. 2 meter is attached to what particular part of the works tank, or just what?

A. It is attached to the gas mains between the outlet between the purifiers and the inlet to the storage holder.

844 Q. And Meter No. 3?

A. The same thing.

By Mr. Ransom:

Q. On No. 1 the same thing?

A. All the same.

Mr. Tobin: There isn't any No. 1 here.

Mr. Ransom: Perhaps that was covered while you were out of the
om. No. 1 is temporarily out of use.

By Mr. Tobin:

Q. "Gas Registered, Uncorrected," what does that indicate?

A. That indicates the gas registered by the meters uncorrected, as
e index shows.

Q. As the index shows?

A. Yes.

Q. And "Gas on Hand at 7 A. M.," those are at the different
lders?

A. Different holders.

Q. And the last column in that particular space gives the total
ount of gas on hand?

A. It does.

Q. And the next, "Gas Made," that indicates the amount of gas
ade each day?

A. That is right.

Q. And "Gas Sent Out"?

A. That is right.

Q. Will you be good enough to explain this change at the head
the column which read, "Dust, Pounds Used"—what change has
en made there?

A. That is the amount of tar that we burn under the boilers each
y, the percentage of gas oil, rather, that is formed into tar.

Q. Do these records show all of the gas oil received by the com-
ny?

A. Yes.

Q. And they also show all the coal received by the com-
pany?

A. Yes.

Q. And all of the tar used by the company?

A. Yes.

Q. When I referred to coal I had in mind the different kinds of
that go into the manufacture of gas. Your answer covers
hracite as well as bituminous coal?

A. Yes, sir.

Mr. Tobin: Now, if the Master please, I only had a chance to look
up yesterday—

The Master: Is that all you have?

Mr. Tobin: That is all I have now.

The Master: Have you anything else, Mr. Neumann?

Mr. Neumann: Why, if Mr. Cummings wants to go on. I haven't
thing else along the lines that I indicated. I have something on
exhibits, if the Master permits me.

The Master: The witness is here for cross examination. Go ahead with anything you have.

By Mr. Neumann:

Q. Mr. Morrison, I call your attention to Defendants' Exhibit E under "General Coal Bought." There is a sub-heading there "Sold" 24,680 pounds, 11,017 gross tons, net tons, 12,340—is that right?

A. That is right.

Q. When was that coal sold?

A. On the dates indicated here in the sold column.

846 Q. To whom?

A. To employees of the company.

Q. And is that true of every item of coal sold on these exhibits that it was sold to employees of the company?

A. It is.

Q. And is the price indicated anywhere?

A. No.

Q. Now, calling your attention to Defendants' Exhibit E under "Soft Coal Bought," the fourth subheading, the word "Sold" is stricken out and the words "Adjustment" is written in there—is that correct?

A. That is correct.

Q. And then the plus sign, and then the figures in pounds, 17.90 under gross tons plus 8, and under net tons plus 8.960. What is that, what adjustment is that?

A. I don't recall.

Q. Now, going over further on the sheet under "Oil Bought" there is a column of figures there that have been crossed out with a lead pencil?

A. That is right.

Q. The total was 117,747?

A. That is right.

Q. And some of the figures there were erased and changed, is that true?

A. That is true.

Q. Then there is another column with the figures totalling 117,555?

A. That is right.

Q. Can you explain that?

I call your attention to the third item to account for in the first the amount is 300,483, and in the second 300,291.

A. I don't recall what that correction is for. It must be the bill of lading.

847 Q. Now, just above that under "Oil Bought" the first item is December 5, 1919, gallons, 128,419?

A. Right.

Q. And the next item, December 22d, 1919, 106,794?

A. Right.

Q. There is a line crossed through that, and underneath that written the figures 106,602?

A. Up here you will find billed 106,602.

Q. So that was corrected to conform to your bill?

A. Right.

Q. What was the original amount, what you received?

A. What we received.

Q. So you were billed for less than you received?

A. A little bit.

Q. And you didn't pay for what you received, but what you were billed for?

A. That is right.

Q. Now, directing your attention to November, 1919, Defendants' Exhibit D, under "Generator Coal Bought" you have the subdivision "Sold," the fourth item. Those amounts were sold to the persons whose names appear under Generator Fuel?

A. Yes.

Q. And they are all employees of your company?

A. Every one of them.

By Mr. Tobin:

Q. The oil used in the manufacture is accounted for by meters, is it?

A. By meters and tank measurements.

Q. How do you make certain of the measurements by meters as far as a slow meter or fast meter is concerned? How often do you have those meters sent to be inspected?

A. When they show a discrepancy.

Q. How do you discover that discrepancy?

A. By reading them every day, every morning at 7 o'clock.

Q. When you speak of a discrepancy—

A. Between the tank measurement and the meter reading.

Q. You then send the meter for inspection?

A. Yes.

Q. If you find it seems to be running differently from your tank measurement?

A. Yes.

Q. Have you anything to do with the payrolls, the works payroll?

A. Yes.

Q. What part do you have to do with the works payroll?

A. I make it up.

Q. You make it up each week?

A. Each week.

Q. That is, you certify to the works payroll?

A. No, I make it up and certify to it as well.

Q. Then you turn that payroll over to whom?

A. To Mr. Raynor.

Q. Is that the only payroll that you make up, the works payroll?

A. That is all.

By the Master:

Q. Do you carry anybody on that payroll that is not actually employed?

A. Absolutely not.

849 Q. Do you carry any amount in there that is not actually paid?

A. No, sir.

Q. Do you carry any man that you don't actually need?

A. We can't get all we need.

By Mr. Tobin:

Q. Does your position as superintendent extend beyond the actual manufacture of gas?

A. No.

Q. The work in the office is in charge of some one else?

A. Yes, sir.

Q. Your work is entirely that of the works?

A. Entirely.

Mr. Tobin: We would like, if the Master please, an opportunity to—

The Master: Have you asked everything you are prepared to ask?

Mr. Tobin: At this moment, yes.

Q. Who makes up the shop payroll?

A. I don't know anything about the shop.

Q. You don't know who makes that payroll?

A. No, I do not.

The Master: Now, are you all through?

Mr. Tobin: As far as I can at this time determine.

The Master: Have you anything else to ask now?

Mr. Tobin: No, sir.

The Master: Have you, Mr. Neumann?

Mr. Neumann: Not at the present time.

The Master: The cross examination is ended. I shall permit you however, to recall Mr. Morrison for further cross examination before I permit counsel to rest his case. I want to protect the complainant against anything happening, that is all.

850 Mr. Neumann: All we want is a reasonable opportunity to take this up in view of Mr. Frank's situation.

The Master: I am protecting the party that called the witness and I am going to give you an opportunity to recall him if you find you have any more questions to ask him. For the record his cross examination is ended now.

Redirect examination.

By Mr. Ransom:

Mr. Ransom: I offer in evidence the daily record of manufacture for the month of May, 1919.

The Master: Was any question asked with reference to it?

Mr. Neumann: Not a question.

Mr. Ransom: Except as I had him identify them and certify to his signature.

The Master: Who did?

Mr. Ransom: Mr. Morrison. He identified these.

Mr. Neumann: Yes, and you compelled us to introduce the others.

The Master: I will take it. Are you going to offer the rest of these that were not offered?

Mr. Ransom: Yes.

Paper received in evidence and marked Complainant's Exhibit No. 82.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of August, 1919.

851 Mr. Neumann: I object to it as incompetent, irrelevant and immaterial and upon the further ground that so far as the examination of this witness is concerned, based on the others offered in evidence, they are shown to be incorrect.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 83.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of September, 1919.

Mr. Neumann: I make the same objection as last urged by me.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 84.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of October, 1919.

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Paper received in evidence and marked Complainant's Exhibit No. 85.

Mr. Ransom: I offer in evidence daily record of manufacture for the month of January, 1920.

Mr. Neumann: I make the same objection.

The Master: That has not been identified by the witness, has it?

852 Mr. Ransom: Yes, it was produced and identified by him.
The Master: When? You had better make sure, because I don't recall that at all.

Q. Mr. Morrison, I show you these daily records of manufacture for April, 1920; March, 1920; February, 1920, and January, 1920.

Are these the daily records of manufacture as kept by you during those months?

A. They are.

Mr. Ransom: I offer them in evidence.

The Master: They are offered as one exhibit.

Mr. Neumann: I object to them upon the same grounds as before stated, and upon the additional ground that no finding can be based on part of a year. Upon the additional ground that at least one of them contains no certification by Mr. Morrison.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Four sheets received in evidence and marked Complainant's Exhibit No. 86.

Q. Mr. Morrison, does the gas oil vary in volume according to the temperature?

A. It does.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: On the further ground that this witness has not qualified in reference to this particular subject.

The Master: Same ruling.

Q. After you have measured the gas oil received and in your tank, after you have measured it according to the tank scale and S53 according to the plumb-bob, do you make any readjustments based upon temperature or the variations in the temperature?

A. No.

Mr. Neumann: One moment. I object to it on the ground it is incompetent, irrelevant and immaterial; it must be purely a guess if anything.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: I understood him to say he does not make any adjustment.

The Witness: I don't.

Q. The oil as measured on the bill of lading weights, do you know whether that is based upon the adjustments according to temperature?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. The question itself indicates that the witness may not have any knowledge of it.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is.

Mr. Ransom: That is all.

The Master: Anything else, Mr. Neumann?

Mr. Neumann: Yes, in a moment.

Cross-examination.

By Mr. Neumann:

Q. What do you mean when you say you know it is based on an adjusted measurement?

A. I pass the bills for the oil and see the figures that it is adjusted to.

854 Q. Who adjusts those figures?

A. The Standard Oil Company.

Q. Have you anything to do with it?

A. No.

Q. Do you know what basis it is adjusted on?

A. No.

Q. All you know is that it is adjusted?

A. Yes.

Q. You have no knowledge how it is arrived at, or anything else?

A. No.

Q. Then these figures on the reports, or any of the adjustment figures that you speak of, are not based on your knowledge?

Mr. Ransom: I object to the question. It appears on the face of the Produce Exchange certificate that the Produce Exchange inspector makes the—

Mr. Neumann: Where are the Produce Exchange certificates? They are not here in evidence.

Mr. Ransom: Yes, they are in evidence.

Mr. Neumann: They are not.

Mr. Ransom: You have not followed the record then.

Mr. Neumann: I have followed it as closely as you have.

The Master: Overruled.

A. What is the question, please?

Q. (Read by the stenographer.)

A. Not the actual figures, figuring the quantities myself.

Q. You did not do that?

A. No.

Q. You just took the figure that was given to you?

A. Yes.

855 Q. By whom?

A. By the Standard Oil Company and Marton & Co., inspectors for the Standard Oil.

Q. You mentioned something about the change in temperature having something to do with the oil.

A. Yes.

Q. Just what did you mean by that?

A. I mean if the oil in our tank is of a higher temperature than we are billed for, our tanks may show a little more. If it is less than we are billed for, it will show less.

Q. Does that have anything to do with atmospheric conditions at the time of delivery?

A. It does.

Q. It would vary in the summer as against the winter?

A. Yes.

Q. Which way would it vary in the summer?

A. It would show a tendency to be a plus correction.

Q. A plus?

The Master: A tendency to be.

The Witness: A tendency to be.

Q. And in the winter?

A. A minus.

Q. What would you call June, the month of June, a summer month or a winter month?

A. Summer month.

Q. What would you call November?

A. A winter month.

Q. And December?

A. A winter month.

Q. And yet on your work sheets reports those three months contain oil adjustments all plus. How do you explain that?

856 A. Do they show a plus?

Q. That is what the testimony indicates.

A. I don't know.

Q. You have made an adjustment at the end of the month by adding to each month?

A. Yes.

Q. In some instances a thousand and in other instances two thousand gallons?

A. Yes, for a discrepancy that appears between the oil received and the oil billed for.

Q. Is that what your original explanation was?

A. Yes.

Q. And that has nothing to do with this adjustment at all that you are talking about now?

A. Yes.

Q. What has it to do with it?

A. The temperature, it changes the volume.

Q. You do not get my point, Mr. Morrison. If I understood your testimony correctly, the work sheets, the daily reports of manufacture, indicated that there were adjustments made at certain times, at the end of the month.

A. That is right.

Q. And that ran through both winter and summer months?

A. Yes.

Q. And there was always an amount added to the amount of oil used; is that right?

A. That is right.

Q. Whether it was winter or summer?

A. Yes.

Q. What do you say those adjustments were based on?

A. The difference between the tank measurements and the bill of lading.

857 Q. Why should there be a difference between the tank measurement and the bill of lading?

A. A difference due to temperature. Some times—

Q. What temperature?

A. The temperature of the gas oil as billed to us and when we receive it.

Q. How long after it is billed to you do you receive it or how soon after it is billed to you do you receive it?

A. I do not know.

Q. And you have not any knowledge of that at all?

A. No.

Q. What is the usual time?

A. I do not know.

Q. It does not run from winter to summer, does it?

A. No.

Q. You do not mean, or you do not want this Court to understand, that these adjustments are based on the difference in temperature by reason of the fact that they are billed to you at different times, and that, for instance, you receive a delivery in June and that it is not billed to you until November?

A. No.

Mr. Ransom: Objected to as absurd.

The Master: Overruled.

The Witness: No, I would not want the Court to understand that.

Q. Ordinarily you receive your bill shortly after you receive your cargo, do you not?

858 Mr. Ransom: Objected to on the ground that it appears in the exhibits in evidence that the Produce Exchange measurements are readjusted as to temperature, according to the oil as it was at the time it was tested and certified by the Produce Exchange inspector.

The Master: Overruled.

Mr. Neumann: There is no such thing in the record.

A. We receive the bill anywhere from two to three weeks after the oil has been received.

Q. Take, for instance, a shipment in June, you get your bill, even if it were the latter part of June—you would get it the third week in July, would you not?

A. Yes.

Q. Do you think there would be any change due to temperature between the 30th of June and the 31st of July?

A. It would not enter into it at all.

Q. Of course not.

A. Not that date. We are billed according to the temperature of the oil on the date it was shipped.

Q. And you want this court to infer from what you have said that the difference in temperature is due to the fact that you get your delivery on June 30th and the bill on July 31st?

A. No.

Mr. Ransom: He has not said anything of the sort.

The Witness: Nothing of the sort.

Mr. Ransom: You ought to understand that.

Mr. Neumann: Coming from you, I think it is a compliment.

Mr. Ransom: It is, I will admit it, very complimentary.

Q. Is that as full an explanation as you can make of that?

859 A. There may be a discrepancy in the price, as I have explained before.

Q. This is another discrepancy you are talking about. Just tell us how the discrepancy in the prices would affect it to such an extent—to the extent at least of 2,000 gallons a month?

A. Suppose the barge pulls in on high tide and he hooks up to our oil line and starts to pump, and he has 130,000 in, and something goes wrong with his pump, he has to stop his pump, and he wants to get out on that tide, and if he is not quite through he will not take the time to purge his line as he should; sometimes he takes oil back with him. Then the question arises as to the bill of lading and the amount received.

Q. Then you would not be getting the full cargo of oil?

A. No, we would not.

Q. How would you know that?

A. By measurement.

Q. How would that be indicated on the record, on the daily works record?

A. It is not indicated.

Q. There is not anything, then, to indicate it?

A. Not there.

Mr. Neuman: That is all.

Mr. Ransom: That is all.

By the Master:

Q. Mr. Morrison, I notice by these work sheets for 1920 that your average gallons of oil used per thousand cubic feet was 4.54 for the month of February, for instance; is that right (indicating paper)?

A. That is right, yes, sir.

Q. And you would run as high as 5.25, I see.

A. That is right.

860 Q. How do you account for such a high quantity of oil per thousand cubic feet?

A. During the extremely cold weather we had to use the oil to try to get the candle power.

The Master: Let me see your 1919 sheets, will you?

Mr. Neumann: Mr. Morrison, in the summer time you would use less, would you not?

The Master: Wait a minute, I am not through. (Master takes papers.)

Q. And in September, 1919, your average was 4.91, and you went as high as 6.53—no, I beg your pardon, 4.33 and you went as high as 5.80 in September?

A. Yes.

Q. Why?

A. Here is our city candle power over here (indicating).

Q. I do not care anything about that.

A. We have to run our oil, if our candlepower is reported low by the city; we have to get it up, and in order to get it up we have to use the oil.

Q. Why does it get so low?

A. Sometimes the grade of fuel enters into it. We strike some coal that we cannot produce the candle power with as readily as we can with others. The condition of the machine may enter into it; a dirty machine cannot produce as good a candle power as a clean machine.

Q. When you find your machine is dirty do you not clean it up?

A. Switch over to a small machine and clean the big one.

Q. What?

A. Yes.

861 Q. I see in February, 1919, your average was 4.49?

A. Yes.

Q. In March it was 4.29?

A. Yes.

Q. In April it was 4.35?

A. Yes.

Q. Doesn't that indicate a dirty machine?

A. No.

Q. It was pretty high, was it not?

A. No, not for that time of the year.

Q. As late as April?

A. Yes.

Q. Well, in May you only got down to 4.20?

A. Yes.

Q. It is pretty high, isn't it?

A. No, not for our works.

Mr. Ransom: 4.20 is pretty low.

The Master: Well, Mr. Woods testified that 4.20 was what it ought to do.

Mr. Ransom: On the average.

Mr. Vilas: 4.2.

Mr. Neumann: No, he said in good operating condition it ought to do 4.2 for a plant of that size.

Mr. Ransom: 4.2 on the average.

The Master: Anything else, Mr. Neumann?

By Mr. Neumann:

Q. Wouldn't that indicate, Mr. Morrison, that the machines needed repairing of some kind?

Mr. Ransom: Wouldn't what indicate that?

Mr. Neumann: What we have been questioning about.

The Master: You are simply going over what I have already asked him.

A. Not so much repairing as cleaning.

862 Q. You cannot get the same efficiency out of an old machine that you can out of a new one, can you?

A. Yes.

By the Master:

Q. You ought to; isn't that so, Mr. Morrison?

A. Yes.

Q. You ought to, if you keep it clean?

A. Yes.

By Mr. Neumann:

Q. Would you say that was true, irrespective of the age of the machine?

A. Yes.

Q. Take a machine 60 years old, would it do as good work as a machine a year old?

A. With the other apparatus considered.

Q. What do you mean by that?

A. When we are building a machine today we do not build it the same as we did sixty years ago.

Q. Take as an ordinary proposition, irrespective of any improvement in the arts, a machine sixty years old and a machine one year old, which would be of the greater efficiency?

Mr. Ransom: Objected to on the ground that Mr. Neumann is confusing the situation and the fact. The machine is not sixty years old in the sense of all of the parts of it, the wearing parts being sixty years old. A machine may have been originally installed sixty years before.

The Master: That is what Mr. Neumann means. Take a machine originally installed sixty years ago, producing gas and being run today, is there any difference in the efficiency of that than there would be in a machine a year or two old?

863 Mr. Neumann: That is irrespective of the improvements in the arts.

A. Considering the blowing apparatus and steam, yes.

Q. It would be just as good, is that your idea?

A. Yes, if all the conditions were the same, the blowing and the same amount of steam, the method of introducing the steam into the machine, yes.

Q. I am talking irrespective of any improvements in the art of manufacture at all. Do you get the point I mean?

A. You mean if the machine is hooked up today the same as it was sixty years ago would it give the same results?

Q. Certainly.

A. Yes.

Q. Yes, a machine one year old as one sixty years old?

A. Yes.

Q. There would not be any difference at all?

A. There had not ought to be.

Mr. Neumann: That is all.

The Master: That is all, Mr. Morrison.

Cross examination closed.

Mr. Neumann: With the reservation that——

The Master: Cross examination is closed.

Mr. Neumann: Yes, but with the understanding——

The Master: There is not any understanding. I have granted your application.

Mr. Neumann: Yes, and that is what I mean.

864 The Master: To recall him if you find there is something else.

Mr. Neumann: Yes, but I did not want that statement to appear afterwards, which would make it appear that there had been a change in the Master's ruling.

MAYNARD H. SPEAR, recalled by the complainant.

Direct examination.

By Mr. Ransom:

Mr. Ransom: I offer in evidence a certified copy of an indenture made April 10, 1901, by and between the Long Island Illuminating Company, party of the first part, and the Flushing Gas Company, party of the second part, which was Exhibit 30 for Identification, certified by the Acting Secretary of the Public Service Commission for the First District, this being that lease——

Mr. Neumann: Is that one of those from Exhibit- 1 to 46, offered for identification?

Mr. Vilas: It was the last one in the first volume which we held back as not identified.

Mr. Neumann: There was some other exhibit that was dependent upon that.

Mr. Ransom: There is a consent of stockholders that that does not cover.

Mr. Neumann: If the Court pleases, I would like to read this over before making objection. (Examines paper.) If the Court

please, this is objected to on the ground it is incompetent,
865 irrelevant and immaterial, not properly proven, and on the further ground, as I recall it—I do not remember the number of the exhibit—

Mr. Ransom: Exhibit 30 for Identification.

Mr. Neumann (continuing): There was a preceding exhibit to this one, which was dependent upon this one being proven, and the one this one was dependent upon has not as yet been proven.

Mr. Ransom: The subsequent one might be deemed to depend on this one.

Mr. Neumann: Well, whichever way you want to put it.

The Master: What is this certificate of the Public Service Commission; what does it certify to?

Mr. Neumann: It certifies that this is a copy on file with us, that is all.

The Master: Does that sufficiently prove it?

Mr. Ransom: Under the provisions of law the Public Service Commission require leases of public utility property to be evidenced to the defendant Commission in a certain way.

Mr. Neumann: That is a new one on me, that you can prove a certified copy of an instrument by proving it is on file in our office.

Mr. Ransom: I think that is the way the law contemplates. I think that is one of the purposes of that provision of the Public Service Law.

Mr. Neumann: I am afraid you have forgotten the provision of the Code.

The Master: I do not think I can do that. You have certified to the Public Service Commission that what you have given them

866 is a copy of a lease, and then you want them to certify that this is a copy of what you have given them; and then you want me to assume from that that this is a correct copy of what you have. I do not think I can do that. I will sustain the objection.

Mr. Ransom: I have the original.

Q. Mr. Spear, have you produced from your files the original of this lease just referred to?

A. Yes, I have.

Q. And is this such original (handing witness)?

A. It is.

Mr. Ransom: I offer it in evidence. May I have this marked for identification, this copy; and allow me an exception to your Honor's ruling.

The Master: Why do you want that marked for identification if you have the original here?

Mr. Ransom: Because I personally am of the opinion that that is a competent method of proof, and—

The Master: I will not mark it for identification; we have the original of the document here. I do not see any percentage in marking that for identification.

Mr. Ransom: You will allow me an exception to your Honor's ruling with regard to this method of proof.

The Master: Yes. I do not get the point of it at all, when you have the original paper.

Mr. Ransom: I offer in evidence the original document.

Mr. Neumann: Yes, we want to formulate objections.

The Master: Now let me hear any objections to this original document.

867 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, taken out of the clear skies and introduced here without any foundation laid for it at all; no signatures proven or anything else.

The Master: What do you mean, it is not properly proven now?

Mr. Tobin: The signatures attached to that have not been proven in any way.

The Master: Why, Mr. Tobin, I am surprised at you.

Mr. Neumann: Who knows what the Long Island Illuminating Company was or that that is their instrument? There is nothing to show that.

The Master: What are you talking about; here is a notarial acknowledgment.

Mr. Tobin: We are talking about this particular company, the Long Island Illuminating Company.

The Master: But here is an acknowledgment under the seal of a notary, with his signature. Do you mean to tell me that that does not prove this paper?

Mr. Neumann: Without anybody coming here to prove that the signature of the Illuminating Company is correct?

The Master: I have a notary's certificate that it is.

Mr. Neumann: If your Honor thinks that is competent evidence I will simply take my exception to it.

The Master: I would like to know on what theory it is not.

868 Since when is a notary's certificate not proof of the fact? Overruled.

Mr. Neumann: Exception.

Mr. Tobin: There is no foundation as to where the Long Island Illuminating Company enters into this particular case.

The Master: Mark it Exhibit No. 30 to take the place of the exhibit for identification.

Marked Complainant's Exhibit 30 in evidence.

Q. Mr. Spear, have you produced here from the files of your company the original coal vouchers of the New York & Queens Gas Company for the year 1920 to date?

A. I have.

Q. Are these such vouchers and are they all of them (indicating witness)?

A. And there are some in this—

Q. Coal?

A. Yes, there are some for the coal bought in April.

Q. Let me have any additional vouchers which relate to coal.

A. (Witness hands counsel papers.)

Mr. Ransom: I offer in evidence 1920 coal vouchers produced by this witness.

The Master: Can we identify them any more closely than that? Is this one voucher?

The Witness: No, that is the voucher of the Lehigh & Wilkes-Barre, and for the handling of it.

The Master: We have got one voucher of the Lehigh & Wilkes-Barre Coal Company, dated January 15, 1920, for \$5,251.27, attached to which is the bill of Peace Brothers for handling \$869.8710.77. Another one of Peace Brothers for handling of \$26, Lehigh & Wilkes-Barre Coal Company, March 11, 1920, for \$5,362.74, and Peace Brothers, for handling, \$771.60, New York Edison Company, February 3rd, 1920, for \$3,864.13, Peace Brothers for handling, two sheets—

Mr. Neumann: Is your Honor reading the prices or the totals of those bills?

The Master: The totals.

Mr. Neumann: I must object to that.

The Master: Just wait a minute. (Continuing) Two sheets \$724.85. Bill of Astoria Light, Heat & Power Company, April 30th, 1920, for \$7,310. Another one, use of scow, \$72; another one, towing, \$30.

Mr. Neumann: I must object to the Master reading into the record from those bills.

The Master: Another one, towing, \$77. Another one for New Amsterdam Gas Company, labor loading, \$16.50; another one, New Amsterdam, labor, \$39.10; Peace Brothers, \$399.97. Another one, Peace Brothers, \$549.59. That is what you are offering as an exhibit?

Mr. Ransom: I am offering it as an exhibit.

Mr. Neumann: Prior to formulating an objection, may I ask the witness some questions on these?

The Master: Yes.

By Mr. Neumann:

Q. Mr. Spear, this bill dated April 1st, 1920, from the New Amsterdam Gas Company, what does that mean?

A. That is for handling, loading the coal on trucks at the yard, which they delivered to us when we had to get some coal 870 in an emergency from them.

Q. And that was during the week ending March 29, 1920?

A. Yes, if that is the bill; I cannot see from here. What does the bill reads.

Q. Yes. And that was due to the fact that you ran out of coal.

A. Ran short of coal, yes.

Q. The next one for the week ending March 13th, 1920, is the same?

A. Yes.

Q. This bill of Peace Brothers, have you a contract with them?

A. No.

Q. You just pay them by each job?

A. Yes.

Q. From your office who supervises this work?

A. Mr. Morrison.

Q. Do you check it?

A. Yes, certify to it on the back.

Q. Certify to the quality?

A. The quality of the work performed, yes.

Q. He does not certify to the amount?

A. Certifies to the amount of labor put on the bill, yes.

Q. Isn't that signature "M. Morrison" after the word "Quality
0 K.?"

A. It is.

Q. Where do you see anything about labor?

A. Well, that is always considered by us in signing there, that
it is a check of quality and quantity.

Q. Notwithstanding the fact that the stamp says, "Quality," you
considered it covered everything?

51 A. Everything as to quantity and quality, yes.

Q. And that is true of all these certifications?

A. Yes.

Q. Now, these bills for the Astoria Light, Heat & Power Com-
pany, they are also for coal sent to you from that company?

A. Yes, because we could not get any coal from the Lehigh &
Wilkes-Barre Coal Company or any other dealer.

Mr. Neumann: I move to strike that out as irresponsible.

The Master: Motion denied.

Mr. Neumann: Exception. Now, then I object to this as in-
competent, irrelevant and immaterial, not properly proven, and upon
the additional ground that a part of a year is no part upon which
to base any finding as to whether a statute is confiscatory or not,
and upon the further ground that the proof here should be limited
as to some date.

The Master: Objection overruled.

Mr. Neumann: One minute, please, may I finish?

The Master: I thought you had finished.

Mr. Neumann: No. If this is permitted to continue and the case
continues on, they could at the very last moment put in prices—

The Master (interrupting): Yes.

Mr. Neumann: There must be some limit as to when the prices—
when their proof must stop.

The Master: It will when they rest their case, that is when it will
stop.

Mr. Tobin: If your Honor please, we also urge a further objection
in this way, there is no proof before you as to any contract
52 price or any price whatever as between the New York &
Queens Gas Company and the Lehigh & Wilkes-Barre Coal
Company; and also the further objection as to these particular batch
of bills, that there is nothing here to indicate that the bills have
been paid, they are simply marked as bills received, they are un-
complete vouchers.

Mr. Neumann: They are not paid.

Mr. Tobin: And they are not paid, and we deem that they should not be offered in evidence until paid, because they are not proper proof as to what was an actual expenditure until they are paid.

The Master: Objection overruled.

Mr. Tobin: Exception.

The Master: That batch of papers will be considered as *on exhibit*.

Mr. Tobin: We would like a special exception to that part of the vouchers which are not paid yet.

The Master: Call it any kind of exception you like.

Mr. Tobin: All right.

The Master: Special or general.

By Mr. Ransom:

Q. Mr. Spear, the voucher of the Lehigh & Wilkes-Barre Company bears an endorsement, "Paid by Check No. 4436, February 20, 1920." To what does that refer?

A. It shows that that check was drawn on February 20th, and sent to the Lehigh & Wilkes-Barre Coal Company.

Q. The check of the New York & Queens Gas Company?

A. Yes.

873 Q. And the stamp, "Paid," the voucher of the New York Edison Company, "Paid by Check No. 4441," the same as that?

A. Yes.

Q. And the initials then are W. R.?

A. It shows the check was checked against the invoice by Mr. Raynor.

Mr. Ransom: These will be considered then, marked as one exhibit?

The Master: Yes.

Vouchers marked Complainant's Exhibit No. 86.

Mr. Neumann: There is no stamp on them, is there, or signature of the person who received those checks on those vouchers?

The Witness: No; we do not send the voucher with the checks.

Q. Mr. Spear, have you likewise produced from your files the original vouchers of the Standard Oil Company of New Jersey for gas oil received and paid for in 1920?

A. I have.

Q. And these are such vouchers (indicating)?

A. They are, except that I do not think the check has been drawn yet for the April account, I am not quite sure of that.

Q. You mean the one of April 3, 1920?

A. Yes.

Q. Paid by Check No. —

A. Oh, yes, May 17th, that is right. I know we had it up the other day.

Q. And annexed thereto is the certificate of the Produce Exchange checker?

A. Yes, sir.

The Master: That comes as part of the voucher, does it?

874 The Witness: It comes with every bill, yes.

Mr. Ransom: I offer them in evidence.

Mr. Tobin: We object, if your Honor please.

Mr. Neumann: One moment. Let me see them, please.

Mr. Ransom: Yes (handing papers).

Mr. Neumann: May I ask a question before formulating an objection.

The Master: Yes.

By Mr. Neumann:

Q. Mr. Spear, this stamp on the back of these bills has your name as general manager signed thereto?

A. Yes.

Q. Now, one of the items is "Price O. K." and then there are some initials that look like "W. J. T."?

A. Yes.

Q. Is that correct?

A. Right.

Q. Who is W. J. T.?

A. W. J. F.—Foy.

Q. William J. Foy?

A. William J. Foy.

Q. Your bookkeeper?

A. General bookkeeper, yes.

Mr. Neumann: Now, what purport to be certificates of the Produce Exchange, purporting to be signed or signed with a stamp by Charles Martin & Company, are specifically objected to on the ground that they are improperly proven, no foundation been laid for them, not the proper method of proving those facts.

875 The Master: I will ask Mr. Spear a question about them.

What is the custom with reference to the delivery of oil?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving the custom.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Mr. Neumann: He may not know anything about the custom outside of his own company.

The Witness: Charles Martin & Company do all measurement for the oil companies and certify to the oil conditions and quantities shipped in each barge.

The Master: How long has that been the custom?

The Witness: I could not say how long that has been a custom, it is so many years.

The Master: In other words, the custom of the port around here, or is it general throughout the country, if you know?

The Witness: I do not know about the country, but I know about this port here.

Mr. Ransom: Specifically provided in the contract.

The Master: Well, what I want to get at is, these vouchers are accompanied by this certificate for whatever it may be worth.

Mr. Neumann: I object to it as irrelevant, incompetent and immaterial.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. Yes.

876 Mr. Neumann: Then can I further question him?

The Master: After they are in evidence you can, yes.

Mr. Neumann: Not now?

The Master: No.

Mr. Neumann: Then I object to the bills on the ground they are incompetent, irrelevant and immaterial, not properly proven, not shown to be proper vouchers.

The Master: Overruled.

Mr. Tobin: Also the further objection, if your Honor please, that there is nothing before the Master to show the price or the contract price for this particular oil; there is no evidence here whatever.

The Master: Objection overruled.

Mr. Neumann: Upon the further ground that they appear to be self-serving declarations.

The Master: Same ruling.

Mr. Tobin: Exception.

Marked Complainant's Exhibit No. 87.

By Mr. Ransom:

Q. Mr. Spear, included with these bills are also certain credit memoranda of the Standard Oil Company of New Jersey?

A. Yes.

Q. Giving you credit for discrepancies in quantities?

A. Yes.

Q. Have you also produced here the other vouchers of your company for expenditures thus far in the year 1920?

A. Yes, sir.

877 Q. That is vouchers covering other materials and supplies than coal and oil?

A. I have.

Q. And those documents in the files before you are such vouchers?

A. They are.

Mr. Ransom: I offer them in evidence.

Mr. Neumann: Objected to on the ground they are immaterial and irrelevant, not properly proven, no foundation laid for them, hearsay, self-serving declarations.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Mr. Ransom: May they be considered as marked one exhibit?

The Master: Yes, one exhibit.

Considered as marked Complainant's Exhibit No. 38.

Mr. Tobin: Before you proceed, Judge Ransom, we would like to ask the privilege of the Master of an opportunity of examining these vouchers and then offer any specific objection we may wish. It is hard to examine, within the time given here today, all of these various vouchers that are handed up by you and passed in as an exhibit.

Mr. Neumann: And at the same time try to keep track of Judge Ransom's questioning.

The Master: I will give you an opportunity at the next session to specifically object to any of those that you want to.

Mr. Tobin: Any vouchers of this bundle?

The Master: Yes.

Mr. Tobin: I thank you.

578 Q. Mr. Spear, what is the capacity of your tanks for the storage of oil?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully testified on both direct and cross by the witness Alrich, and by the witness Morrison.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. With the tanks full and the oil line, it would be about 193,000 or 194,000 gallons.

Q. Well, what is the capacity of the two tanks?

A. The working capacity is about 180,000 gallons up to the inlet pipe of the oil.

Q. But you sometimes come above the inlet pipe?

A. Yes, if we get a very large barge.

Mr. Neumann: If the Court pleases, I direct attention to Exhibit 79, which was sworn to by the witness Alrich as being correct; the oil tank capacity there is given as 180,000 gallons.

The Master: Yes.

Q. That is correct up to the inlet pipe?

A. Yes.

Q. Mr. Spear, you testified you were familiar with the rate paid to the various classes of labor of the New York & Queens Gas Company, and I show you Complainant's Exhibit No. 77, that purports to show certain rates of pay and compensation for various classes of employees. Are those rates of pay and compensation correct, according to your knowledge, as of the present time?

Mr. Neumann: Are you through, Judge Ransom?
879 Mr. Ransom: I have asked a question.

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully covered by the witness Woods.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: Yes.

Mr. Neumann: And also by this witness' own Exhibit No. 58 or 59, whichever it may be.

The Master: Overruled.

Mr. Tobin: Exception.

Mr. Cummings: Going to let him contradict his own testimony?

Mr. Ransom: Going to show the wages to date.

Q. Are you familiar with the number of the different classes of employees that the company now has in the gas making labor?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not the proper way of proving it, just like an agent proving his own authority.

The Master: Overruled.

Mr. Tobin: If your Honor please, you have got before you these monthly sheets which would indicate the particular thing that he is trying to testify to here to a hypothetical question. I think it is clearly out of order, that is, from this witness. He is the Vice-President and General Manager, and I think he should be confined to the actual operation of the company rather than to take and hand him something which is entirely outside of the plant itself.

880 The Master: Overruled.

Mr. Tobin: Exception.

A. Yes, I am.

Q. You have now a superintendent?

A. Yes.

Q. Have you now a clerk?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it, the payrolls should be here. That would be some evidence of what people are in their employ, and what they are paid.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Well, if the Master please, I think it is decidedly unfair to the State to allow the witness to testify in this way when they can bring in the actual operation of the company and show to you what the actual operation is. You can get the actual facts. Now, I think that we ought to have the actual facts instead of this sheet, which is made up just for the purpose of taking care of this particular case as viewed by the attorneys on the other side.

The Master: But you don't seem to understand the question.

Mr. Tobin: Oh, yes, I do.

The Master: Mr. Spear is asked whether, as a matter of fact they do today have a superintendent, and he says yes.

Mr. Tobin: Yes.

The Master: And whether as a matter of fact they do today have a clerk, and the question is unanswered, and the objections are overruled. Do you?

881 Mr. Tobin: I object to the form of the question, if your Honor please.

The Witness: We do.

Q. How many gas makers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and the pay rolls are the best proof of the fact.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Three.

Q. How many engineers?

A. Three.

The Master: When I take the pay rolls you object because there should be some man to swear to it, and when we have a man to swear to it, you say I should take the pay rolls.

Mr. Tobin: That is not the purpose of this testimony.

The Master: Objection overruled.

Mr. Neumann: The difficulty is, you never have the pay roll here and the man at the time so that you can confront him with it.

Q. How many boiler firemen?

Mr. Neumann: Same objection.

The Master: Same ruling.

A. Six.

Q. How many generator firemen and coal passers?

Mr. Neumann: Same objection.

The Master: Same ruling.

A. Six.

Q. How many laborers, purification and the like?

A. Five.

882 Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Do you know how many men you now have engaged on repair labor?

A. (No answer.)

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Is it at least the number shown on Exhibit 5?

Mr. Neumann: Same objection.

The Master: Same ruling.

Mr. Neumann: Exception.

Mr. Tobin: May we ask before any other answers are made as to what particular date he is asking these questions?

The Master: As of this date?

Mr. Tobin: As of today's date?

The Master: Yes, now.

A. At least five.

The Master: Of repair labor?

The Witness: Yes. Part of those were included in the statement of mine that there were five laborers altogether; part of them are on repair work.

Q. Now, Mr. Spear, reference has been made to the Douglaston extension. Are you familiar with the amount of money that has been expended in constructing this Douglaston extension?

A. I am.

Q. That has been done under *year* direction?

A. It has.

Q. And are you likewise familiar with the amount of gas which has been sold to consumers on the Douglaston extension?

883 A. Yes.

Q. And have you also checked up from your records the revenues thus far from the sales of gas to those consumers?

A. I have.

Q. And was this statement prepared by you and is it correct, to your knowledge?

A. It is.

Mr. Ransom: I offer it as a compact form of the witness's testimony in that respect.

Mr. Cummings: Is this some more evidence in tabular form, your Honor?

The Master: Yes.

Mr. Cummings: Pellets, eh?

The Master: Take out that last item there, you have not asked about that.

Mr. Ransom: I will ask him about it.

Q. Have you also computed, at 8 per cent, the interest on the additional investment required by the Douglaston extension, aside from the investment in any additional plant and holders?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and not within the province of this witness to testify to any such fact.

Mr. Tobin: Further objection that there is no testimony here as to what that particular investment is.

The Master: That is what the judge is trying to prove now.

Mr. Neumann: There is no testimony here as to any rate; 8 per cent is a pure assumption.

Mr. Tobin: More than that, there is no testimony as to the particular investment.

884 The Master: That is what he is trying to prove now.

Mr. Tobin: He has got some figures as to income.

The Master: He has got figures as to the cost.

The Witness: The books show that.

Mr. Ransom: I offer that in evidence.

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it, no foundation been laid for it, the matter presumably could be proven by the books if the books are properly kept, and the other data and records of the company.

The Master: Well, these figures appear in the books in evidence, do they, Mr. Spear?

The Witness: They do.

Mr. Neumann: That is what we want to know, what it is based on.

The Master: And is practically a tabulation from the books?

The Witness: Yes.

The Master: Except as to the computation of 8 per cent on the investment.

The Witness: That is right.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Spread it on the record as part of the testimony.

The statement is as follows:

885 New York & Queens Gas Company.

Investment in Douglaston Extension up to May 1, 1920, and Revenues Therefrom.

Cost of 16" Line.....	\$68,931.15
High Pressure Mains.....	64,923.15
Services.....	5,833.63
Meters.....	3,277.70
Meter Installation	2,770.08

	\$145,735.71

Cubic Feet of Gas Sold on Douglaston Extension.

January, 1920.....	267,000 cu. ft.
February, ".....	413,200 "
March, ".....	529,500 "
April, ".....	551,000 "

Total.....	1,760,700 cu. ft.

Total Revenues from Sales of Gas to Consumers on Douglaston Extension	\$1,271.00
Interest at 8% on additional investment required by Douglaston (aside from investment in additional plant and holders).....	\$11,658.86

Q. Mr. Spear, do you know how many apartment houses there are in the whole territory served by the New York & Queens Gas Company?

Mr. Neumann: Objected to on the ground it is incompetent, immaterial and irrelevant, not the proper way of proving it; and 886 in addition to that, a flat contradiction of some of the testimony given by Mr. Spear on his former direct examination.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: Do you know?

The Witness: Yes.

Q. How many?

A. Six.

Q. Do you know the number of families in the largest of those?

A. I do.

Mr. Neumann: Exception.

Q. What number?

Mr. Neumann: Objected to.

The Master: Overruled.

Mr. Neumann: Exception.

A. 26.

Mr. Neumann: This was relating to your entire area that you serve, is it, or did you confine that to Douglaston?

The Master: Yes, the hole area of the complainant company.

Mr. Neumann: That is what I understood.

Q. Mr. Spear, at what points are mains of the New York & Queens Gas Company exposed to the action of water in crossing marsh or meadow land?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not within the witness' province to testify to any such fact.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

887 A. On Linden Avenue between Flushing and College Point, and on Lawrence Street, between Flushing and Queens Borough Hill; and a short distance on Hillside Avenue between Flushing and Queens Borough Hill.

Q. On this Linden Avenue main, how large a main is that?

A. 12 inches.

Q. For what distance, approximately, is it thus exposed to the water?

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

Mr. Tobin: Exception.

A. About a mile.

Q. And are there any points on the line where it is also exposed to the action of the temperature of the air?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within this witness' province so to testify.

The Master: Overruled.

Mr. Tobin: Exception.

A. Yes, where it crosses the bridges.

Q. How many?

A. Three.

Q. And on the Lawrence Street line to Queens Borough Hill, about how long there is the distance where it is exposed to the action of the elements on this marsh or meadow land?

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

A. I would say about three-quarters of a mile.

888 Q. Now, are there any places where the mains are exposed to the action and effect of the temperature of the air in connection with the crossings of streets and mains over railroads?

A. There are.

Mr. Neumann: Same objection as last urged.

The Master: Overruled.

Q. Where?

A. In Flushing at Union Street, Brown Avenue, Parsons Avenue, Percy Street, Wilson Avenue, and Boerum Avenue, and in College Point at 10th Street, and in Whitestone at 11th Avenue and 10th Avenue.

Q. Referring to the Parsons Avenue to Boerum Avenue region in Flushing, are those mains thus exposed in connection with the elimination of grade crossings?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness to testify to any such fact.

The Master: Overruled.

Mr. Neumann: Exception.

A. They are.

Q. Where is the City testing station, so-called?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, no foundation shown for it, and he ought to show that it is known to him first.

The Master: Overruled.

Mr. Neumann: Exception.

A. On the first floor of the building located on the southwest corner of Boerum and Madison Avenue, Flushing.

889 Q. Well, how far is that building from the point where the mains are thus exposed in the Boerum Avenue grade crossing elimination?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, the witness not qualified to testify to that fact.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. The service end of the building is about 100 feet from the railroad crossing.

Mr. Neumann: I move to strike the witness' answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. And at the railroad, the railroad there runs in a cut?

A. It does.

Q. The elimination proceedings being those of the Public Service Commission for the First District?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it.

The Master: Objection sustained on the ground that that is not the way to prove it; this witness has no knowledge about it.

Q. Well, how far is it from the exposed main to the city testing station building?

The Master: He said about 100 feet, didn't he?

Mr. Neumann: Yes, already covered.

A. To the service end, yes.

Q. And do you know the approximate width of that depression in which the railroad now runs at that point?

890 Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Overruled.

Mr. Neumann: Not the proper way of proving it.

A. I would say about 75 feet.

The Master: In other words, that is the extent of the exposed main?

The Witness: Yes.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Ransom: The defendants may cross examine.

Cross-examination.

By Mr. Tobin:

Q. What is your present position with this company today, Mr. Spear?

A. Vice-President and General Manager.

Q. You came to the company in what year?

A. 1902.

Q. And you stayed until what date?

A. 1905.

Q. What was your position during that period of time, sir?

A. Superintendent.

Q. And the company was then known as what?

A. Newtown and Flushing Gas Company.

Q. The New York & Queens Gas Company, the present corporation, then came into existence when?

A. In 1904. I will correct that by saying that in 1904, in August, 1904, it was the Newtown & Flushing Company, and after that it was the New York & Queens Gas Company.

891 Q. That was the merger, the Newtown & Flushing was merged into the New York & Queens Gas Company.

A. Yes.

Q. That was in 1904?

A. Yes.

Q. Are you familiar with the organization of the New York & Queens Gas Company?

A. No.

Q. At the time of the merger, you were an officer in the Newtown & Flushing Gas Company?

A. No, I was only superintendent.

Q. You were superintendent at that time?

A. Yes.

Q. Well, as superintendent, did your work entail a knowledge of the plant, that is the extent of the plant owned by the Newtown & Flushing Gas Company?

A. Yes; I was superintendent of the works and distribution department, in charge.

Q. That is, you had to do with the tangible property of the company?

A. I do not quite get what you mean by that.

Q. By tangible property I mean property in the works and property outside, like the distribution and so forth?

A. What do you mean, I had to do with it.

Q. It was all under your supervision?

A. Yes.

The Master: Including the mains and services.

The Witness: Yes, mains and so forth.

Q. That is, including the property where they manufactured the gas?

A. Yes.

892 Q. What property did the New York & Queens Gas Company have when it was merged with the Newtown & Flushing Company?

Mr. Ransom: Objected to as not cross-examination of this witness, not part of the cross-examination on any proof of matters testified to by him.

The Master: Overruled.

Mr. Ransom: Exception.

A. What do you mean by property, the plant?

Q. What property did the New York & Queens Gas Company have when it took over the Newtown & Flushing Gas Company, which happened, as I understand, about July, 1904; what tangible property did it have, and this refers to the present company, the New York & Queens Gas Company?

A. I could not tell you offhand just what property they had.

Q. Do you know if they had any property?

A. Why, yes, it was an operating company?

Q. Sir?

A. It was an operating company.

Q. The New York & Queens Gas Company was operating?

A. No, the Newtown & Flushing Gas Company.

Q. I understand the Newtown & Flushing Gas Company was an operating company doing business, and you were then superintendent of that company?

A. Right.

Q. The New York & Queens Gas Company was organized about July, 1904?

A. Yes.

Q. You stated—I asked you the question as to what property the New York & Queens Gas Company had at that time?

893 A. Oh, I don't know.

Q. You don't know. Mr. Spear, how long did you stay with the New York & Queens Gas Company following the consolidation or merger?

A. Until January, 1905.

Q. So that you were superintendent at the time that this merger came into existence?

A. Yes.

Q. And did you continue as superintendent with the New York & Queens Gas Company?

A. I did.

Q. And your duties were similar to those that you had with the Newtown & Flushing Gas Company?

A. They were.

Q. That is, they embraced the—you were in charge, or it embraced the tangible property in the streets, and the plant and the distribution system, the plant and works?

A. Yes.

Q. And can you now testify as to what property came into the company or into the merger, or the merged company, when the New York & Queens Gas Company was merged into the Newtown & Flushing Company, or, better still, the Newtown & Flushing Company was merged into the New York & Queens Gas Company?

Mr. Ransom: Objected to as not within the scope of cross-examination.

The Master: Overruled.

Mr. Ransom: Exception. Further, it is very vague and indefinite. What does he want a description of?

The Master: Answer the question.

A. You mean what additional property did the New York & Queens Gas Company—

894 Q. (Interrupting.) What property, if any, they had—what tangible property, distribution system, or what plant property did they have?

A. I don't know that.

The Master: After the merger of the New York & Queens Gas Company and the Newtown & Flushing Company, the New York & Queens Gas Company had an operating plant, didn't it?

The Witness: Yes.

The Master: Where?

The Witness: In Flushing.

The Master: That is the way I understood it.

Mr. Tobin: I asked Mr. Spear as to what property the New York & Queens Gas Company had at the time the Newtown & Flushing Gas Company was merged into it.

The Master: He said he did not know, and now I thought you were trying to bring out what the combined property was after the

merger. If that is not what you want, I will withdraw my question.

Mr. Tobin: He has indicated—he has said that he was the superintendent of the New York & Queens Gas Company after the merger was accomplished.

The Master: Yes;

Mr. Tobin: He was superintendent down to January 1, 1905.

The Master: Yes.

Mr. Tobin: In other words, he had to do with the distribution system.

The Master: Yes.

Mr. Tobin: Of the company as merged, and he had to do with the plant.

895 The Master: Yes.

Mr. Tobin: Now, I am asking him as to what property came into the merged company from the New York & Queens Gas Company.

The Master: Do you mean what property was added to the Newtown and Flushing?

Mr. Tobin: Yes, sir, and came to make up—

The Master: As a result of the merger?

Mr. Tobin: Yes.

The Master: Can you tell us that?

The Witness: No, I do not know that.

The Master: You don't know of any property that was added to the Newtown & Flushing property?

The Witness: No.

Q. Was there any property added?

The Master: He said he did not know of any.

Q. Well, answer it that way; was there any property added to it?

A. Not that I know of.

Q. You would be the person to know that, because you were superintendent of the merged company, weren't you?

Mr. Ransom: I object to that, that does not follow at all.

The Master: Overruled.

Mr. Ransom: Exception.

A. Yes, if it was anything to do with the works or the mains system or the shop.

Q. That is the tangible property of the company, that is what I am after. You know what tangible property is?

A. Yes.

896 Q. So that—I don't know the date, maybe you could tell me the exact date of the merger.

Mr. Neumann: August 1st, 1904.

Q. So that on August 1st, 1904, all of the property that came into the merged company, which is the New York & Queens Gas Company, was the property that was formerly owned and in title held by the Newtown & Flushing Gas Company?

A. So far as I know.

Q. Well, you learned of no property which did come in through the merger of the New York & Queens Gas Company?

A. No.

Q. On January 1, 1905, you left the employ of the company, sir?

A. I did.

Q. And went where?

A. To the Williamsport Gas Company, Williamsport, Pennsylvania.

Q. And how long did you stay with that company?

A. Until July, 1906.

Q. Then you returned to this company?

A. Yes.

Q. The New York & Queens Gas Company?

A. That is right.

Q. In what capacity?

A. Manager.

Q. How long did you remain as manager?

A. Until, I think, 1907.

Q. Was your title General Manager, or just Manager?

A. Just Manager.

Q. Can you tell us in a brief way what change in duties were effected by reason of your becoming Manager as against being

97 Superintendent, as we understood you were with the old company before you left.

A. Well, I took over the new business as well as the works and shop.

Q. When you say new business, what do you mean?

A. Getting new business.

Q. That is the commercial side of the work?

A. Yes.

Q. Or the commercial side of the company?

A. Yes.

Q. You were the person in charge of the reports that were made to the various branches of the Government, as they might be required from time to time?

A. Not at that time, no.

Q. When did you go into charge of that particular branch of the work?

A. In 1913.

Q. 1913?

A. Yes.

Q. Then that was turned over to you, entirely turned over to you and under your personal charge?

A. It was.

Q. Could you tell briefly just what extent you had to do with the making of those reports, that is, the various reports called for by the, we will say, Public Service Commission and the State Tax Department of New York?

A. You mean since 1913?

Q. Since 1913, when you took charge of that?

A. Parts of the report I made up personally, and other parts I went over with the—Mr. Raynor, or whoever did the detail work.

898 Q. Well, take the values that were placed in those reports as to particular items of property, where did you obtain those values?

A. They were taken from the books.

Q. Taken from the books of the company?

A. Yes.

Q. And those figures on the books were obtained from where?

A. I don't know that I quite get your question.

Q. I am asking particularly as to values, you were called upon to put certain values in those reports, that is to illustrate particularly, there accompanies the reports to the State Board of Tax Commissioners a table of the tangible property in the streets, in other words, the mains and services and date and age and so on, there is a lot of detail there, and I want you to tell me, you said you made those reports from 1913 on?

A. Yes.

Q. I want you to tell me where you got the figures that were put in those particular supplementary reports, or supplemental sheets.

Mr. Ransom: I object to the question in so far as it used the term "value." So far as the reports to the Public Service Commission, a statement of value is not required; so far as the reports to the State Tax Commissioners, likewise a statement of value is not what is required by law, or what is made, but it is a definite kind of a computation of a peculiar kind, it is not value, and it is not even regarded by anybody as value.

Mr. Tobin: I have my own opinion about it, Judge Ransom.

Mr. Ransom: I follow the statute, and even the Attorney General should do that.

899 The Master: Objection overruled.

Mr. Cummings: Let the witness answer.

A. The amounts were taken from the books.

Q. I want to have you tell me how they got on the books, from what source you got them on the books?

A. When I took hold of the books there was a certain value there.

Q. I have particular reference to these supplemental reports that would be made from time to time to the State Board of Tax Commissioners as to the detail of the tangible property in the streets, which call for an engineer's estimate, and I am asking you as to whether you took those from the books, or whether you took them from the engineer of the company?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, not within the scope of cross-examination, it assumes a lot of things about documents which are in no way produced and in no way before the witness and in no way in evidence.

Mr. Tobin: The purpose of my question is this, that Mr. Spear testified at folio 162 that he made up the reports to these various state

agencies and state departments, and I am simply asking him how he obtained the figures that went in those reports.

The Master: Objection overruled.

Mr. Ransom: He has said he took them from the books.

Q. That is not my question; I asked you the figures that were in the books, from what source they were put on the books.

Mr. Ransom: Objected to as already answered.

900 The Master: Overruled.

Mr. Ransom: Exception.

A. There was a certain amount for each account on the books, and each year we added to it the new construction or any additions to the previous figures.

Q. Take those new construction lines, where do you obtain those figures?

A. From the actual material and labor that was put into the jobs.

Q. And those were turned in to you?

A. Yes.

Q. By whom?

A. Well, it all depends upon what work it was.

Q. Take the tangible property in the streets, take the mains and services that are laid in the public streets, who turns in the data that goes into your books as to the figures subsequently used by you in these reports?

A. The contractors turn in the reports of the amount of pipe they use, and bills for the labor. The material was figured at cost price to us.

Q. Who figured the cost?

A. Well, it may have been one of the clerks there, or I may have figured it myself.

Q. Now, when the daily record of manufacture is turned over by you to Mr. Morrison, what do you do as far as the books are concerned?

A. I take those figures and make up what we call our office report, putting the values on that, that is, the cost of the coal, the cost of the oil, and add it to the previous amount, and figure the cost per ton and the amount used and the amount on hand in dollars and cents.

901 Q. In other words, you did not use these daily reports—

A. For quantities, yes.

Q. You say you used the reports as a basis—I say, you did use these daily reports as a basis for quantities, and then you yourself established the prices before they were passed on to the bookkeeper?

A. Yes, from the invoices.

Q. Did you do this yourself?

A. I did.

Q. And those figures were given on what you call a daily report?

A. No, it is a monthly office report.

Q. Monthly office report, and handed to the bookkeeper for entry in the books?

A. Yes.

Q. That was the process?

A. That is right.

Q. Was any memorandum whatever kept of the orders or requirements of coal either monthly or weekly, that is, of the coal you might need for a particular month or for a particular period of time?

A. No, except on the first of each month, when I get the sheets I always look at the quantity of coal that is on hand, and if I find that we can take some coal, if it is a time when coal is coming easy, I order in a cargo.

Q. How do you order that?

A. Sometimes by telephone, to Mr. Francklyn, and sometimes by memorandum asking him to deliver coal within the next week or two weeks or three weeks.

Q. What check would the office have as to incoming coal as per the request that you have made for coal?

A. Well, I am at the plant almost every morning, go there 902 the first thing from the house, and I always know when coal comes in, I see it coming in there when I am down there.

Q. I don't mean that so much, I mean as to the memorandum that you send to Mr. Francklyn, and the subsequent receipt of it by the company; is there a memorandum kept of your request for this coal?

A. I don't think so, because sometimes it is a written memorandum and sometimes it is over the telephone.

Q. In other words, the practice is not settled as to just how you order your coal?

A. Oh, yes; it is, it is either by telephone or memorandum.

Q. I mean, it is not definite, that is, there is no requirement made by you that it shall be ordered on a written memorandum or statement of any kind, it is just as it happens?

A. No. As I consider the needs of the company require it it is ordered.

Q. Who has to do with making up the requirements for the coal year, that is, the number of tons necessary for a particular coal year?

A. I have.

Q. That is yourself personally?

A. Yes, sir.

Q. Do you sit in conference as to the price that is to be paid by your company for coal, with the officials of any other company?

A. No.

Q. How does your company protect itself as to the price it shall pay for coal?

A. Well, I know that the prices that we have been getting on coal have been less than other companies of our sizes, because frequently—

Q. That is not just exactly what I want. I want to 903 know how your company protects itself. You are an officer of the company, you are vice-president and general manager of the company. How do you protect yourself as to the price? Do

you simply accept what somebody else says shall be the price for your company?

A. Yes, we accept whatever the Consolidated makes a contract for.

Q. So you accept their prices?

A. Yes, but I know that it cost other small companies—

Q. I don't care for that particular part; I am anxious to know whether you take any part in the contracts that are made by the Consolidated Gas Company?

A. No.

Q. Does any officer of your company take any part?

A. No.

By the Master:

Q. Who is the president of your company?

A. Moses Taylor.

Q. He is not active?

A. No.

Q. Does he get a salary?

A. No.

Q. What other officers have you?

A. The treasurer is Mr. R. A. Carter.

Q. Does he get a salary?

A. No.

Q. Who else?

A. Mr. Raynor the secretary.

Q. He is active?

A. Yes.

Q. Who else?

A. Mr. George S. Woods is consulting engineer.

Q. He only gets \$500 a year?

A. That is right.

904 Q. Then the general executive officers of the company are yourself and Raynor?

A. Yes.

A. Yes, and Mr. Carter.

Q. But I mean sala

A. That is all.

Q. What is your salary?

A. \$5,000 a year.

Q. What is Raynor's salary?

A. \$2,400.

Q. And Woods' salary is \$500?

A. Yes, sir.

Q. That is less than \$8,000, isn't it?

The Master: That is what I was trying to find out. How is that \$20,000 item made up for general officers?

Mr. Ransom: That includes not only general officers' salaries, but general office expense. It is called "Salaries, General Office."

The Witness: Salaries and expense, isn't that the item?

Mr. Ransom: It is not only the salaries of the general officers, but it is the expense of the general office. It is all the salaries in the general office. Isn't that correct, Mr. Spear?

The Witness: Yes.

The Master: I see from Mr. Teele's Exhibit, Mr. Spear, that the salaries of general officers is only \$5,760.78 for the year.

Mr. Ransom: 1919.

The Master: That is your salary of \$5,000?

The Witness: Yes, but it was not 1919. That was made \$5,000 in the latter part of December or the early part of January.

905 The Master: Well, this \$5,760 includes yourself and Raynor?

The Witness: Yes.

The Master: And Woods \$500?

The Witness: Yes.

The Master: For the whole year?

The Witness: Yes.

The Master: I had the idea that the general officers' salaries amounted to that \$20,000 item.

By Mr. Tobin:

Q. What was your salary on the 1st of January, 1919?

A. \$4,500.

Q. What was the salary of Mr. Raynor at that time?

A. I don't recall right now.

Q. About how much?

A. I think it was about \$2,000.

Q. What increases have occurred in the year 1919 down to and including this date?

A. I would say probably about \$900 in the two salaries.

Q. In round numbers how much is paid to directors for attendance at meetings of your corporation over at the works, or in New York City, in a given year?

Mr. Ransom: I object to that as immaterial, and the details are shown in the revenues and expense statement.

The Master: Objection overruled.

Mr. Ransom: Exception.

The Master: Do you know what the fees were for directors in 1919?

The Witness: Between \$1,600 and \$1,700.

906 Q. How often do the directors meet?

A. Once a month.

Q. Are you sure about that?

A. It won't run over \$2,000. It is \$140 a month, and that would be \$1,680.

Q. Don't they meet more than once a month?

A. Occasionally we have a special meeting, once a year.

The Master: How many directors are there?

The Witness: Seven.

The Master: Is there a minimum number of directors required for a gas company?

Mr. Ransom: Five or more.

Q. What are their names?

A. William Rockefeller, N. F. Brady, G. B. Cortelyou, Moses Taylor, R. A. Carter, W. R. Addicks, and Donald Geddes.

Q. What arrangement has this company as concerns work done for it by the Consolidated Gas Company?

A. They do not do any work until I give them an order to do it.

Q. Can you tell us what class of work the Consolidated Gas Company does for your company?

A. Some repair work.

Q. Repairs in what particular places, or what classes of repairs, if you can tell us?

A. You mean their own men.

Q. I mean any work that is done by the Consolidated Gas Company and charged against the New York & Queens Gas Company?

A. Well, occasionally they do repair work for us such as changing the position of a tank and erecting it in a new location. Their 907 men erected the fence for us. They looked after the installation of the present four boilers. They designed and looked after the alterations to the boiler house.

Q. As to these particular jobs that you have just mentioned, was that work accomplished within the last few years?

A. Yes.

Q. Can you tell us as to who had charge of that work for the Consolidated Gas Company?

A. Well, I always take it up with Mr. Morris of the Consolidated.

Q. What is his title?

A. Engineer of Construction.

Q. What would you say that it would be, new construction that they had to do with, as far as employment by the Consolidated Gas Company is concerned?

A. Also betterments and repairs.

Q. In other words, can you tell us if there is any line of demarkation as to where they come in and are employed or where they don't come in?

A. No, it is whatever I ask them to do.

Q. Whatever you ask them to do?

A. Yes.

Q. Are you directed as to this work to be done by your board of directors or is it done entirely upon your own say-so?

A. When I see the need of some work I ask them to make up an estimate of what it would cost to do the work. When I get that estimate I take it up with the Board of Directors and get authorizations. Then the prices are gotten, and I go over it with them and decide upon the contract and give them an order to go ahead with the work.

908 Q. Then would you say that practically all the new construction and all the replacements of plans and distribution system is cared for by the Consolidated Gas Company?

A. No, I would not.

Q. Is there any line that is drawn *that is drawn* between the work to be done by the Consolidated Gas Company and by the company itself?

A. Well, they look after most of the construction, particularly the large items, because they have the organization to do it and we have not, and we avail ourselves of their experience. There might be small items of construction which we can do, and which we do ourselves.

Q. Rather then it is the large pieces of work that are cared for — the Consolidated Company?

A. For the works, yes. They very seldom do anything on the distribution, except that I called them in on the Douglaston extension, and also for advice on the changing of our mains in connection with this big sewer construction which is going on in Flushing.

Q. All of the work done by the Consolidated Gas Company, not only for the work actually accomplished, but for the overhead, that is for the superintendency, is charged against your company, is it not?

A. Whatever time they put on it, yes.

Q. Whatever time the engineers of construction, or whatever time the superintendent of plants puts on to your particular company is charged against your company and paid for by your company?

A. Yes.

Q. Can you tell just how you take care of discrepancies in the oil contracts—not in oil contracts, but in oil received and 909 coal received, that is, in your particular capacity of Vice President and General Manager, how you take care of that particular part of the work?

A. For instance, a barge of oil came in this afternoon, I would go over tomorrow morning while I am at the plant with Mr. Morrison—

Q. He has already received the measurements of the barge and handed it to you, is that it?

A. No. Sometimes it is two or three days later that we get the actual measurements. The captain on the barge knows approximately what he has got, and Mr. Morrison takes an accurate measurement of the tanks, and then—

Mr. Neumann: I move to strike out the word "accurate." The witness Morrison has already testified as to what he does.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. I have in mind particularly the discrepancies—I am not particularly interested in the—

A. I am leading up to that. If there is a large discrepancy I would take it right up with the Standard Oil Company and tell them that the quantity we received was much less than the amount. For instance, I think it was in February or March, there was a discrepancy of about 8,000 gallons between what the captain said he had and what he had, and we knew that some went back in the barge. I made a claim right away and notified them that some went

back in the barge. We got a credit memorandum from the Standard Oil Company for that difference.

Q. Then there is a measurement taken for the benefit of the company of the gas oil as it comes from the barge?

910 A. Oh, yes.

Q. You disregard what the captain of the boat says it contains?

A. Except to use that in seeing how near we came to the barge so there is not a large discrepancy. A difference of 300 or 400 or 500 gallons we would not pay any attention to until we got the bill.

Q. Then it is measured again where? It is measured at the barge and it is measured again where?

A. We do not measure it in the barge.

Q. I mean as it comes from the barge?

A. We only measure it in the tanks.

Q. In the tanks themselves?

A. Yes.

Q. You don't pay any attention to it—as I understand it, it passes through this conduit, or pipe line that is connected with the barge, and is drawn to your tank?

A. Yes.

Q. You don't pretend to make any measurement at all of the oil until it reaches the tanks?

A. No, we cannot.

Q. You were going to tell us as to what process you followed as far as getting credits and claims is concerned?

The Master: He did tell us that.

Q. Taking up the coal, how do you follow that through, how do you take care of that as far as protecting the company in getting the full quantity of coal that is billed to you is concerned?

A. Only by the measurement of the piles which is taken periodically.

Q. There is no account taken of it as it is unloaded from the barges to the wagons or carts which draw it from the barges to your coal piles?

911 A. No.

Q. You take no account at all until it reaches the coal pile?

A. That is right.

Q. And then you follow it through in the measuring of the coal as it goes into the manufacture of gas, that is, you take another measurement then?

A. We measure it periodically, usually about the first part of the month.

Q. I mean these buggies?

A. I don't pay any attention to the buggies except occasionally as I go to the generator house and look to see if they are filled to about a certain point, to see how they are running.

Q. Your account, then, of quantity is taken in these periodical

measurements as against the amounts that are received for bills rendered?

A. Yes.

Q. Now, as to the quality of coal, do you make any complaint if the quality of coal does not meet the necessary requirement, or what your gas maker says it should be?

A. Yes.

Q. How often would it happen in the course of a year that the quality of coal would be deficient?

A. Oh, it is very rare.

Q. Very rare?

A. Yes. Coal will vary, but we very seldom make a complaint on the quality of coal.

Q. Did you find in the year 1919 that the quality of coal was more or less deficient, and that you had to make up that deficiency by something else to make up the manufacture of gas?

A. It had more dust in it than usual.

912 Q. It had more dust than usual?

A. Yes.

The Master: Screenings?

The Witness: Screenings.

Q. Have you access to the reports of the Auditing Committee that are made from month to month?

A. Yes.

Q. Are those kept in your file?

A. They are.

Q. In the Flushing office?

A. They are.

Q. I think you testified—I am not sure, but I think you testified as to how far your authority went in the way of expenditures. Can you tell us again how far your authority extends in the way of expenditures or when you have to go to the board of directors as far as getting work done is concerned?

A. There is no set rule on it except that I do take it up with the board of directors on anything that will run around \$1,000 or more.

Q. The reason I ask that question is this: I would like to have you tell us if you can as to whether you have any fixed rule, or any rule adopted, or any by-law adopted by the board of directors as to competitive bidding? Is there any rule that you are bound by in the purchase of supplies for this company as far as competitive bidding is concerned?

A. There is no rule laid down by the board of directors, but I always do it as a business transaction.

Q. You follow that in transactions of the company?

A. Yes.

913 Q. Taking the large expenditures, does the same thing occur there?

A. It does.

Q. Do you always have competitive bidding as to the work to be done?

A. Yes.

Q. Do you follow closely the quality of the coal supplied to the company?

A. Yes, I do.

Q. From whom do you receive reports on which to base your complaints if any are made, whom do you receive reports from, the gas maker?

A. No, from Mr. Morrison, or from looking over results, or from looking over the coal myself. From my experience in the gas business I can tell—

Q. You can tell whether it is proper quality or not?

A. Yes.

Q. Now, what would you say as to the quality of coal in 1918 as compared with the quality of coal in 1919, confining yourself entirely to the coal received by your company?

A. Well, I cannot recall the comparison now between 1918 and 1919.

Q. Can you say as between 1919 and the period of time that we have gone in 1920?

A. No, I do not want to draw a comparison on that from memory now.

Q. Would you say it was better in 1920 than it was in 1919?

A. That would be pretty hard for me to say from memory; I would not want to do it.

Q. Would you say it was about the same in 1920 as it was in 1919?

A. I would not want to make a statement on that.

914 Q. That is, you do not care to make a statement?

A. Well, I cannot recall it from memory.

Q. Now, taking up the quality of gas oil furnished, would you say that the quality of oil furnished in 1919 was better than that furnished in 1918?

A. Well, I can't recall that.

Q. Would you make the same answer as to 1920, as against the quality of oil in 1919?

A. I don't think the oil is as good now as it was two or three years ago, I will say that.

Q. Back in 1917?

A. Because they have been taking more gasoline out of it all the time; just when they started I would not be prepared to say.

Q. But you are satisfied that to-day, during 1920, that you are not getting as good a quality of oil as you got in 1917?

A. I would think there is some difference, yes.

The Master: How about coal? Would you say it was poorer today than it was two or three years ago?

The Witness: No, because during the war period we got some cargoes that were very poor. We even had to go to the Shipping Board to get some coal, and some of it was awful. It is hard to form a comparison.

Q. On the coal you cannot say, but on the oil you are satisfied that it is not running quite so good. Can you give us any degree of less quality in 1920 as against 1917 or 1916?

A. No, I cannot.

Q. You have not formed any judgment on that?

A. No.

Q. You have seen Exhibit 77, have you not, Mr. Spear?
915 A. Yes.

Q. You are familiar with it?

A. Well, it depends how familiar; I have looked it over.

Q. You know more or less the figures?

A. Yes.

Q. Have you prepared any table, or have you any table made up from the actual book figures as to the cost in cents per thousand cubic feet of gas sold of generator coal, that is, of anthracite coal?

Mr. Ransom: I object to the question. It does not relate to any matter covered by this witness. There is such a table already in evidence by the witness Teele.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

A. No, I have not made any up.

Q. Do you know what the figure is, what the figure would be for generator coal, anthracite coal?

A. I don't recall it just now.

Q. I am using book figures.

A. I say I don't recall from memory just what the figure was from our books.

Q. Is it not a fact, Mr. Spear, that such figures do exist as a part of the records of this company?

A. Oh, yes.

Q. Can you tell us in what manner they are kept by the company? That is, I mean is it a matter of monthly calculation or weekly calculation or just what?

A. Mr. Morrison makes up those figures every day, and then makes up a summary for the end of the month, showing the number of pounds of coal per thousand cubic feet, and the number of 916 gallons of oil per thousand cubic feet, and we also make up monthly figures showing—

Q. These last figures that you speak of, based upon the quantities furnished by Mr. Morrison are compiled by you?

A. Yes.

Q. Is there such a report as that rendered to the directors each month?

A. Not just such a report as that. There is a report submitted to the directors every month as to the cost of producing the gas and distributing it, and the fixed charges, and so on.

Q. Can you give us some detail of that report, that is, I mean as to just how far it goes into detail. Does it tell as to generator coal, that is, the cost in cents per thousand cubic feet of generator coal, anthracite?

A. It shows the total cost of production and the total cost of distribution.

Q. Is there any further separation of those two items? Do you just have those two items, the cost of making the gas and the cost of distributing the gas?

A. In the figures submitted to the board of directors that is the way it is done.

Q. That is, you make a report from the calculation cared for by yourself to the board of directors, but before making that report to the board of directors as to the cost of making the gas and the cost of distributing the gas, you have certain figures before you, certain factors, and those are compiled by you?

A. It is compiled by Mr. Foy under my direction, from the general books.

Q. Can you tell us what factors go into that particular table which give you the cost to manufacture the gas, and the cost to distribute the gas for a particular month?

917 A. I don't just get your question.

Q. In your Exhibit 77 you have such factors as Generator Coal, the cost in cents per thousand cubic feet, boiler coal, anthracite, boiler fuel, additional boiler fuel use din account of steam used for high pressure transmission; then you have gas oil, and tar and drip oil credits, and the net cost of oil, net cost of fuel coal, oil, iron oxide water and sundries. In the table that you used to bring about the report that you hand to the board of directors don't you use these same items of calculation, the same factors of calculation?

A. Oh, yes, they have to be summarized in this other report.

Q. You simply summarize it when you hand it in to the Board of Directors?

A. Yes.

Q. And in the make-up of that summary you have an analysis and detail similar to that set forth on Exhibit 77?

A. Oh, yes.

Q. Is that kept as a part of the records of your office, vice-president and general manager?

A. Yes.

Q. Taking the item of gas-making labor, has the company employed at any time during the year 1919 any more than one superintendent?

A. No.

Q. Has it employed how many clerks in that particular branch of the works?

A. One.

Q. And how many gas-makers?

A. Three.

918 Q. Is that the average, three, or is that the extreme number employed?

A. Three would be the extreme number, except that we have an extra man broken in in case of sickness of one of the gas-makers that could take his place, but we only use the three where we are running three shifts.

Q. Taking the 12 months, for many months, would you employ three gas-makers during the year 1919?

A. I can't tell that without looking over the records.

Q. Would you employ two gas-makers for most of the year?

A. That is pretty hard to say. I say possibly two and a half for the year 1919, it might average that.

Q. It would average about two and a half?

A. It might; I can't tell except from the records.

Q. That would be your judgment?

A. I would not want to say positively on that without a study of it.

Q. Take the engineers, how many engineers do you employ?

A. There are always three.

Q. Always three?

A. Yes.

Q. And there were three during the entire year 1919?

A. Yes.

Q. Were there any more than three employed?

A. No.

Q. Boiler firemen, how many men did you employ during 1919?

A. Three.

919 Q. Maybe you have confused that with the generator firemen and coal passers?

A. No, boiler firemen, a man on each shift.

Q. How many men do you employ as generator firemen and coal passers, how many did you employ in 1919?

A. That would depend upon the length of time the machines were run.

Q. Take your laborers for purification, can you tell us the number employed there?

A. That varies. Sometimes they will work on purification and sometimes on other work around the yard.

Q. What plan has the company as to holidays and Sundays and overtime. If you employ these three shifts that you speak about in manufacturing gas is there any necessity at all for overtime?

A. Yes.

Q. In what way is there necessity for overtime?

A. You may have some extra work to do which would call for overtime.

Q. How often would that happen?

A. It would be hard to say how often it would happen, but it does happen.

Q. Do you pay for the time of these men whether they are employed or not, these laborers and boiler firemen and engineers? Do they get their weekly salary whether they are employed or not?

A. There are a few of the old employees that do; they are on the weekly roll. Laborers are all by the day.

Q. And firemen?

A. Yes.

Q. They are by the day?

A. Yes.

920 Q. And gas-makers?

A. I think two of the gas-makers are on the weekly roll.

Q. How about the engineers?

A. Two of them I think are on the weekly roll.

Q. So that this overtime would practically take up what was lost by those regularly employed?

A. No, they are paid if they work overtime.

Q. That is, if the regular employees work overtime?

A. Yes.

Q. Taking your repair labor, how many mechanics are employed on the average?

A. I would say on the average two.

Q. And helpers?

A. About one.

Q. And laborers?

A. I would think it would average two.

Q. Taking up the question of gas oil, can you tell us in your experience how many gallons per thousand cubic feet are needed of gas oil for manufacturing gas?

A. I would say at least 4.2 gallons average for the year.

Q. That is taking the average for the entire period?

A. Yes, sir, the year.

Q. Well, take the year 1919; you say it ought to be 4.2 gallons?

A. I would say at least.

Q. At least 4.2?

A. Yes.

Q. Mr. Spear, can you furnish the names of the employees, and the salaries paid by your company in the year 1919 that goes 921 into the gas-making labor, and the men who were under the title of repair labor?

A. I cannot offhand.

Q. I don't mean offhand, I ask you if you can furnish it?

A. There might be a few men that were employed on repair labor during the year, and part of their shift they might be on repair labor and part on production. Whatever time they spend is charged.

Q. Their names would be carried on the payroll?

Mr. Ransom: The payrolls are here at the request of the defendants, or some of them.

Q. That would be carried on the payroll, is that it, Mr. Spear?

A. Yes. Sometimes we have outside work. For instance, on our boilers we have the repair work done by Christopher Cunningham, Boiler Maker.

Q. That comes in on a separate item, and is not carried on the works payroll, or the payroll of the company?

A. No, it comes in on a voucher.

Q. A regular voucher?

A. Yes, sir.

Q. What has been the experience of the company, taking the year 1918, as to the tar and drip oil credits? What value has there been to them for the company?

A. The value of the tar as fuel. Drip oil we store.

Q. You store and then sell it?

A. Yes. We have not sold any drip oil, though, since the war started.

Q. Why is that, because the price is low, or why?

922 A. We don't get a great deal of drip oil, and we put it in the new storage holder, we have a dam in there, and put it inside of it.

Q. At this particular time how many gallons have you got of this oil on hand?

A. I don't know.

Q. How long have you been accumulating it?

A. I would say that the last we sold was some time in 1918.

Q. You haven't sold any since then?

A. No, except a few gallons of tar that we sold.

Q. What is it worth today in the market?

A. I don't know.

Q. What does it usually sell for?

A. Well, the price varies according to the demand.

Q. For what you sold to the farmers?

A. We get about \$3.50 a barrel for tar when they buy it in that quantity.

Q. Are the barrels returned?

A. No, we charge the barrels in that.

The Master: What do the farmers use it for?

The Witness: For driving rats out of their chicken houses. It is also used under cauliflower to kill cauliflower worms, and to impregnate fence posts, and painting roofs of outhouses.

By Mr. Neumann:

Q. Mr. Spear, when you use the word "tar" do you use it interchangeably with drip oil?

A. No, drip oil would not be used for these purposes.

Q. I understood Mr. Tobin's questions to be directed to drip oil and not to tar?

923 A. The Master asked me what the farmers used the tar for.

Q. In answer to one of the questions of Mr. Tobin you switched from drip oil to tar. He was questioning you about drip oil.

By Mr. Tobin:

Q. I was interested in the quantity of drip oil you have on hand today?

A. I told you I could not tell you that.

Q. Do you know how much it would average in a given year that you obtain from your plant?

A. No.

Q. Can you tell us in round figures how much it would be?

A. No, I could not without looking it up.

Q. Will you be good enough to furnish that to us?

The Master: I am not going to have that.

Mr. Ransom: That has already been furnished.

Mr. Neumann: The Public Service Commission's reports are here, if the witness wants to refresh his recollection.

Mr. Ransom: I will consent that they go in evidence.

Q. As to tar, what do you do with tar?

A. Burn it under the boilers for fuel.

Q. And it is used up just as it comes through?

A. Yes.

Q. To what extent is there value in that tar, to what extent do you charge a credit for that tar as against the gas oil?

The Master: What do you mean? They don't use tar in place of gas oil.

Mr. Tobin: No, but they use it as a credit because it is of some value to the company.

The Master: I don't think your question is accurate, as against gas oil.

924 Q. Mr. Tobin: As a fuel.

Mr. Ransom: It is used in the place of coal.

Mr. Tobin: I understand how it is used. I am asking what it is worth to the company, I don't care how it is used, what it is worth to the company. I am interested in getting how much value there is to this particular tar that is used by the company as fuel.

Q. How much is it worth to the company?

A. We have been charging it at six cents.

Q. As for what year?

A. I know for 1919 we charged that.

Q. That was for 1919?

A. Yes.

Q. And what have you charged for the months that have gone on in 1920?

A. Six cents.

Q. As I understand it, you use this tar as a fuel in place of coal?

A. Yes, supplementing coal.

Q. It is as good as coal, is it not?

A. Well, there is a comparison between the oil and coal.

Q. Why wouldn't you deem it to be of the same value as coal, that is, as far as a credit is concerned?

A. It would not make much difference what value you put on it. You charge it and you credit it, it doesn't make much difference what price you put in there, but it takes less labor to fire the boilers when you are using tar than when you are using straight coal.

Q. Wouldn't that be an item of benefit in its use as against the use of coal, so that it has more value to the company than if the company used coal?

925 Q. A. It is an advantage from the labor standpoint.

Q. Well, it is in the cost?

A. Well, the men don't have to work so hard and they like it better.

Q. Can you state what the cost is, the average cost, in cents per thousand cubic feet of gas made, of generator and boiler fuel in 1919?

A. No, I cannot recall it from memory.

Q. You have that as part of your records in your office?

A. Oh, yes.

Q. And you also have a record as to the cost in cents per thousand cubic feet of gas oil?

A. Yes.

Mr. Tobin: I will suspend just a minute.

By Mr. Neumann:

Q. Did you testify as to where the board of directors held the meeting, Mr. Spear?

A. 55 Wall Street, New York City.

Q. Do they keep minutes of their meetings?

A. They do.

Q. Who takes the minutes for them?

A. The Secretary.

Q. Who is the secretary of the Board of Directors?

A. Mr. Raynar. I used to do it.

Q. Those minutes are under his custody and control?

A. They are.

Q. And they are available, are they?

A. How do you mean available?

Q. They would be available at any particular moment for examination?

A. Oh, yes. They are in the custody of the company.

926 Q. The company also has by-laws, has it not?

A. It has.

Q. When were they adopted, do you know?

A. I think on the organization of the company, except that there have been amendments made.

Q. They have been amended from time to time?

A. There have been amendments made.

Q. And these by-laws, with amendments to date, are available, are they not?

A. Yes.

Q. And they contain the various duties of the various officers?

A. They do.

Q. Who is charged with the duty of taking custody and control of the books and papers of the New York & Queens Gas Company?

A. I do not quite get that question.

Q. Do you mean the question is not clear or you did not hear it?

A. The question is not clear to me.

Q. In what respect? Who is charged with the duty of taking custody and control of the books and papers of the New York & Queens Gas Company?

A. In the by-laws, you mean?

Q. Either in the by-laws or by the company's rule or regulation, or whatever else you want to call it.

A. I am in charge of all the company's property and the operation of the company.

Q. And is that set out in the by-laws?

A. No.

Q. What is it, a rule of the company?

A. Yes.

Q. Is there nothing in the by-laws as to who shall have custody and control of the books of the company?

927 A. Of certain parts of the company. For instance, the seal of the company is in the custody of the secretary.

Q. How about the duties of the secretary?

A. That is set forth in the by-laws.

Q. Have you a copy of the by-laws with you?

A. I have not.

Q. Is there anything in there in reference to the custody of the books?

The Master: What books?

Mr. Neumann: The books of account of the company.

A. No, the by-laws do not state anything about that.

Q. How far back to your knowledge did this company keep books of account?

Mr. Ransom: Objected to as fully covered. It was gone into in great detail.

The Master: I will allow it. Was there ever a time that this company did not keep books of account?

The Witness: No, not that I know of.

The Master: Well, why don't you answer it?

Q. Are the books of this company from the year 1904 to date now in existence?

A. Yes.

Q. All of them?

A. Yes.

Q. Did you keep the same number of books each year as you have produced here in court for the year 1919?

A. No, the operating expense ledger is only a few years old. We did not have one in 1904. I would say the other journal system, or the other books, are practically the same.

928 Q. When did you first begin using an operating ledger?

A. Oh, I do not recall just what year it was.

Q. About four or five years ago?

A. I think this one is No. 2.

Q. And how many years does this cover?

A. I cannot tell you all that without looking at it. It is in my testimony before, when I was looking at the books.

Q. Would you mind looking at it; it is right in court here?

The Master: I am not going to waste time on that; I will not let the witness look at it.

Mr. Neumann: Does your Honor by your ruling mean—what is that?

The Master: I will not let the witness look at it. Look at it yourself.

Q. You testified on your direct examination that there was an auditing committee, consisting of Mr. Edgar Palmer and Mr. Brundage, who audited the books?

A. I did.

Q. Who is Mr. Edgar Palmer?

A. President of the New Jersey Zinc Company.

Q. Is he in any way connected with your company?

A. He is not, excepting that he is on the auditing committee.

Q. Is he connected in any way with the Consolidated or its affiliated companies?

A. I do not know.

Mr. Ransom: I object to that as immaterial.

Q. Is Mr. Palmer paid any salary for the audit of the books?

A. No.

929 Q. Do you mean that he gratuitously audits these books of this company?

A. No, he gets a fee.

Q. Who pays him that fee?

A. I do—the company does, rather.

Q. How much is it?

A. \$20.

Q. For each audit?

A. For each audit.

Q. And how often does he audit the books?

A. Once a month.

Q. And does Mr. Brundage get the same fee?

A. He does.

Q. Is this auditing committee provided for in your by-laws?

A. I am not sure about that, but they were appointed by the Board of Directors at the organization meeting, after the election by the stockholders.

Q. You testified that this auditing committee makes out a certificate; is that correct?

A. It is.

Q. Are these certificates of the auditing committee preserved?

A. They are.

Q. For how long a period back?

A. Oh, I would say that I have those in our office since 1913.

Q. Prior to that time they are not in existence?

A. No.

Q. The New York & Queens Gas Company was organized on what day in the year 1904?

The Master: We have had that half a dozen times. The 1st of August or thereabouts, 1904. Let us get to something new.
930 Mr. Neumann: And the company that was operating in that vicinity prior to that—

The Master: Was the Newtown & Flushing.

Mr. Neumann: Yes.

The Master: We have heard that half a dozen times.

Q. That company was in existence for how many years, from when until when?

Mr. Ransom: Objected to. All those corporate papers are in evidence, showing the incorporation of each of these companies.

The Master: Objection sustained.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Do you know whether the books of account of the Newtown & Flushing Company are still in existence?

A. I am pretty sure they are. I think they have all been delivered to your accountants.

Q. When did you see them last?

A. Oh, I would say it is a month or two months ago that I turned them over to Mr. Frank or something like that.

The Master: Who was Mr. Frank?

The Witness: He was the accountant for the Public Service Commission.

Q. Where was that?

A. 115th Street.

The Master: 115th Street?

The Witness: 15th Street, rather.

Q. What was the predecessor company to the Newtown & Flushing Company?

Mr. Ransom: Objected to as fully shown by the papers in evidence.

931 The Master: No, I will take that.

Mr. Ransom: And not within the scope of the cross examination of this witness.

The Master: I will take it.

A. I do not know, except that there is a long list of companies prior to that. The New York & Queens Gas and Electric and the Flushing Gas Light Company, the Whitestone Gas Company and the College Point Gas Company, and the Flushing Gas & Electric Company. Those are all predecessor companies.

Q. Which one was the immediate predecessor to the Newtown & Flushing Company?

Mr. Ransom: Objected to as not within the scope of cross examination, not the proper way of showing it; it is shown by the exhibits in evidence.

The Master: I will take it.

A. I do not recall.

Q. Didn't you ever look into the history of how your company was organized?

A. Yes, I have gone over the certificates of merger and assignments but I have never made a chart of it.

Q. Is it not a fact that the Newtown & Flushing Company is a merger of the College Point Gas Company?

Mr. Ransom: With the what?

Q. (Continued.) Or a taking over of the College Point Gas Company, I should say, rather than a merger?

A. I do not know just what that chain is; I do not remember.

Q. Do you know if there were any books of account in existence, of any of the gas companies prior to the time the Newtown & Flushing Gas Company came into existence in the year 1900?

A. I have never seen any.

Q. Well, are there any?

A. I have never seen any.

Q. Does that mean that there are none?

A. I would say so.

Q. You testified, did you not, that the data used as a basis from which entries were made in the journal or ledger were not taken from the daily works sheet so far as coal and oil used is concerned; is that correct?

A. No, as far as the dollars are concerned. The quantities are.

Q. The quantities are taken from the daily works sheets?

A. No, the monthly works sheets.

Q. The monthly works sheets. So that if there are any errors in the monthly works sheets they will appear either in the journal or the ledger?

A. Yes.

Mr. Neumann: Let me have those works sheets, please.

Mr. Ransom: Do you mean the daily manufacturing records?

Mr. Neumann: Yes. Those that were introduced in evidence this morning.

Mr. Ransom: They were all introduced (handing counsel papers).

Mr. Neumann: Is the ledger and the journal here?

Mr. Ransom: I believe the ledger and the journal are here (producing books).

Mr. Neumann: I will go as far on this as the Master wants me to in order to demonstrate the point I wish to make.

Mr. Ransom: Or disprove it.

933 Mr. Neumann: Either one. We are after the facts, that is all we are after.

Mr. Ransom: That is a great change in attitude.

The Master: I think Mr. Neumann is doing very well.

Mr. Ransom: He is doing splendidly; I think so, too.

The Master: It is quite a relief to see the examination conducted in this case after what we had in the Consolidated.

Mr. Ransom: He is doing splendidly.

Mr. Neumann: Do you mean that, Judge?

Mr. Ransom: I do mean it, very sincerely.

Q. Mr. Spear, I will direct your attention to Defendant's Exhibit A. The witness Morrison testified this morning and conceded that the column "Oil Used" was incorrectly totaled, in that there was an error therein of 3,000 gallons. Will you kindly turn to either the ledger or the journal to which this entry is carried and indicate it?

A. That is not carried into the journal, it is carried onto the office report, and then the amount in dollars and cents is carried into the journal.

Q. Did you not testify a short while ago that from these sheets you did not take the price, but you took the quantity?

A. Yes.

Q. Then where does the quantity find its way into the books, from what source?

A. Through the office reports.

Q. Did you not state that the office report was only taken so far as the money was concerned and not the quantity?

934 A. No. These figures are taken from these sheets (indicating), and put on the office report, and then the price is figured up on the office report and the quantity in dollars and cents is transferred to the books.

Q. Taking this figure, the total of this column, 146,964, oil used during the month of January, 1919, where and from what source would that find its way into the books?

The Master: Mr. Neumann, I am going to interrupt you, because I think it has been asked and answered before. Mr. Spear, turn to your journal entry, which would include this item of oil used in January, 1919, and let us have it.

The Witness: There it is (indicating).

The Master: Read it out, will you?

Mr. Neumann: You are now calling attention to page 54, and will you kindly read the item.

The Witness: Gas oil 146,964, and the amount is \$10,884.99.

The Master: Then the amount shown on there is the quantity carried into your journal, is it not?

The Witness: Yes.

The Master: That is what I thought it would be.

Mr. Neumann: Certainly.

The Master: That is where I thought you would find it.

Mr. Neumann: I can demonstrate that right through all of them.

The Master: That is right.

935 The Witness: But that amount would not make any difference at the end of the year.

Q. That is not the question, it is whether the underlying data is correct. If the underlying data was incorrect, your books would be incorrect?

The Master: To that extent.

Mr. Neumann: To that extent?

A. Yes, but it corrects itself in the year.

The Master: But you took the quantity Mr. Morrison reported on his sheet and carried that into the journal with the amount of money that you entered in there?

The Witness: Yes.

Q. And that is true of every one of these items that Mr. Morrison's attention was called to in all these daily records of manufacture?

A. Yes.

Q. In each instance where there has been any error in the quantity, as shown by Mr. Morrison's testimony, that error has been carried into the books?

A. I do not know just what errors you called Mr. Morrison's attention to.

Mr. Ransom: I object to it.

Q. Were you here when Mr. Morrison testified this morning?

A. Yes.

Q. Did you hear him testify as to the errors that were committed on these sheets with reference to the quantities of oil used, and the coal, for instance, in one 200,000 pounds of coal dust?

A. Yes. Is that on materials used?

Q. Yes. Then all those errors contained in these sheets were carried right into your books?

936 A. All the figures—

Mr. Ransom: But it does not affect the amount of money.

Mr. Neumann: That is not the question, Judge, and you know it. We are testing the accuracy of these books.

Mr. Ransom: You know that the cost of making gas is the amount of money that has to be paid for the materials that make it up.

The Witness: Any error made in one month would correct itself at the end of the year.

Mr. Neumann: That is not the question.

By the Master

Q. No, what Mr. Neumann is trying to bring out is that you took the figures as they appeared on these monthly work sheets and carried them into your journal?

A. Oh, yes.

Q. And whatever errors appear there appear in your journal entries?

A. Yes.

Q. To that extent?

Mr. Ransom: So far as the quantities are concerned.

A. Yes.

By Mr. Neumann:

- Q. And your answer would be the same as to each specific question on the items that I pointed out to Mr. Morrison this morning?
A. As to the quantities given, yes.

By the Master:

- Q. For instance, I see Mr. Morrison said he readjusted oil used by adding 500 gallons in one instance and 2,000 in another 937 instance and 1,000 in another instance. You took those totals as he reported them?

A. Yes. Many times I tell him to add that quantity.

- Q. When it is added on his sheet it is added on your figures of quantity in the journal?

A. It is.

The Master: Is there much more from Mr. Spear?

Mr. Neumann: Yes, there is quite some more.

The Master: I have to go to my office for a few minutes.

Mr. Neumann: I will be at the Master's convenience. I will suspend or go forward with Mr. Spear, just as you say.

The Master: If I thought you could finish in a few minutes with Mr. Spear I would go ahead.

Mr. Neumann: I doubt that.

The Master: When will you be ready to take up the cross of Mr. Teele and Mr. Raynar, and go forward with your proof?

Mr. Neumann: I will say this to the Court. I will be guided by what the Court tells me, but if the needs of our bureau, that is our statistical bureau and engineers bureau, are consulted I will say frankly it will take them at least ten or twelve days more to go forward. If the Court is willing to grant me that time, why, in the interests of justice, and on the showing we have made—we have tried to be fair with them and to expedite it—I think we ought to have at least ten or twelve days more in order to complete the cross-examination.

938 The Master: The trouble with it is that we are getting pretty close up to the summer, and I will not be able to do any more work on this after about the middle of June, allowing for the time that I have got to submit a proposed report, as I suppose this order requires.

Mr. Ransom: I think it is in the same form.

The Master: And the discussion of the details of it, and the filing of a final report, and the rest of it. I have got to get through with this pretty quick.

Mr. Neumann: Will the Court, then, give me a week?

The Master: I am going away soon after the 15th of June. I am tired and I am through. I am not going to sit any longer. I am willing to adjourn this to a week from tomorrow, and that will give you a full eight days, until Wednesday of next week.

Mr. Neumann: That will be all right.

The Master: With the understanding that we shall go forward until we finish it.

Mr. Ransom: And with the understanding that on the conclusion of the complainant's case they will go forward with the defendants' case.

The Master: Yes, that they will go forward with it.

Mr. Tobin: May I ask, in order to carry out your wishes, what other witnesses Judge Ransom will bring here to testify. I would like to know that in order that we may prepare ourselves.

939 Mr. Neumann: If the Judge will be fair, we will be prepared.

Mr. Ransom: I will tell you now I have no expectation of calling any other witnesses in this case.

Mr. Tobin: Except those that have been called.

Mr. Ransom: Except those that have been called.

Mr. Tobin: That is fair enough.

The Master: Get your matter ready. You have done very well; you have brought out whatever you wanted to bring out without fooling or fishing around. We will get through with it very quickly. I will put this down for a week from tomorrow; that will be the 26th.

Mr. Tobin: Then are you going to run through the rest of the week?

The Master: I am going to run through until you finish it.

Mr. Ransom: May I suggest this, your Honor: There is just one further phase that Col. Miller has to testify to on direct. In fifteen minutes now I could put that in and then they could have it and be ready to cross-examine on that.

940 The Master: All right, put him on. From nine-thirty in the morning, and we will run through to six or seven o'clock in the night.

ALLEN S. MILLER recalled by complainant.

Direct examination.

By Mr. Ransom:

Q. Col. Miller, when you were last on the stand you testified as to your examination of the plant, machinery, apparatus and equipment of the complainant company. Upon this examination made by you did you ascertain what work in your judgment it would be necessary to do upon the various buildings, structures and the various units and apparatus and equipment, in order to put them in the condition in which they were when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: That is overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. Did you also make an estimate of the expenditures necessary in your opinion to put these buildings and structures and this apparatus and equipment in the condition in which the same were when new?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Overruled.

Mr. Tobin: I would like to ask you what the purpose of the question is, Judge, as to these additions and changes that are contemplated; to put the plant on an economical basis of operation, is that what you intend?

Mr. Ransom: I will ask another question which I think will— did you answer that question?

941 Mr. Tobin: I would like to know.

The Master: Read the question.

(The question was repeated by the stenographer.)

A. Yes.

Q. What work, Col. Miller, do you comprehend in the putting of the property in the condition in which it was when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it, and the witness is not qualified.

The Master: Overruled.

Mr. Tobin: The further objection, if the Master please that there is nothing to indicate that the witness has gone to the plant and made the necessary examination so as to carry out what he is going to testify to in the way of changes or improvements.

The Master: Overruled.

Mr. Tobin: Exception.

A. The work involved the repairing of roofs, the pointing of brickwork, the repairing of the mill work, carpenter work, painting the relining in at least one case of the gas-generating apparatus, putting on a few new doors, some new floor plates, some new brick-work on floors. In general it involves the immediate doing of work which would be normally done by the Company in its regular course of maintenance.

Mr. Neumann: I move to strike out the witness' answer on the ground it is not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception.

942 Q. Is this restoration according to the present design or according to the original design?

Mr. Neumann: Objected to on the ground it is immaterial and irrelevant, vague, indefinite and meaningless.

The Master: Overruled.

Mr. Neumann: The witness is not qualified to testify to it.

The Master: Mr. Tobin was anxious to get that information.

Mr. Tobin: I would like to take exception to the Master's observation.

A. According to the present design.

Q. With respect to maintenance and upkeep, in what condition did you find the property which you examined?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and from a witness not properly qualified to testify to that fact.

The Master: Overruled.

Mr. Neumann: Exception.

A. The plant was very well maintained, very well kept up and had been recently painted and had been generally overhauled.

Mr. Neumann: I move to strike the witness' answer out upon the ground that "very well" is meaningless, and "recently overhauled" must be on pure hearsay.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. With respect to operating efficiency, in what condition did you find the plant?

943 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; that is for an engineer to say, not for Colonel Miller.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, there is no proof here that Colonel Miller examined into that particular question, as concerns this plant. There is no proof of that whatever.

The Master: Overruled.

Mr. Tobin: He should not be allowed to testify along that line. Exception.

A. A very high state of operating efficiency.

Q. As a result of your examination, Colonel Miller, have you prepared a schedule showing the work which in your judgment would be necessary in order to put the buildings and structures and the apparatus and equipment in the condition in which they were when new?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and from a witness not properly qualified. It is speculative and unsound, based on a guess, based on supposition and on an hypothesis; and furthermore there is no court in this land that has ever adopted any such rule.

The Master: Overruled.

Mr. Tobin: Exception.

A. What was that question?

Q. (Read by the stenographer.)

A. Yes.

Q. Do you also show in this schedule the amount which it would cost to put these properties in that condition?

944 Mr. Neumann: Same objections as last urged.

The Master: Same ruling.

Mr. Neumann: Exception.

A. Yes.

Q. And will you produce such schedule?

A. That is the first copy (handing counsel), and I have some additional copies.

Q. The first sheet is a summary?

A. Yes.

Mr. Tobin: Let us look at it.

(The witness hands Mr. Tobin copy.)

Q. The cost which you have shown is as of January 1, 1920?

A. Yes.

Q. The references in the first column are to the various units of the structures and equipment?

A. Yes.

Mr. Neumann: I think, if the Court pleases, the instrument speaks for itself.

The Master: I will take this.

Mr. Neumann: Exception.

Q. And on the succeeding pages, with respect to these units of the buildings and structures, have you given the details of the work which in your judgment it is necessary to do, and the cost of such work, as of January 1, 1920?

A. Yes.

Q. And if interrogated by me with respect to each of these items, would you give the details of work as shown in this statement and the amounts of money shown in connection with each such item of work?

A. Yes.

945 Mr. Neumann: Objected to on the same grounds as last urged.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: What is your total?

The Witness: \$6,144.07.

Q. Of which how much is for buildings?

A. \$4,297.81.

Q. And how much for apparatus?

A. \$1,846.26.

Mr. Ransom: I offer this in evidence as a summarized and convenient form for the reception of the testimony of the witness.

Mr. Tobin: We object on the ground that there is no date set as to these buildings, when the improvements are made.

The Master: January 1, 1920.

Mr. Tobin: The cost of the buildings—he does not state as of what date it would cost this to make these improvements or changes.

The Master: January 1st, 1920.

Mr. Tobin: I do not believe so, if your Honor pleases.

Mr. Ransom: The cost as of January 1, 1920.

The Witness: As the top of each column, the top of each column of figures.

Mr. Neumann: What exhibit number is this?

The Master: It will not be an exhibit, it will just be printed in the testimony.

Mr. Ransom: I might have the original marked for identification so there will be no question.

The Master: No, it will be printed in full.

946 Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial, not from a person properly qualified to testify to the facts if interrogated, meaningless and worthless, and of no value to the Court; and upon the further ground that it is not based apparently on any knowledge of this witness, and upon the further ground that it speaks of an abnormal period, that of January 1, 1920.

The Master: The objections are overruled, I am taking the witness' answer as spread out in this paper, subject to your exception. Cross examination will be reserved until we reconvene. The following is the testimony of the witness referred to:

947 *Expenditures Necessary to Put the Plant of the New York and Queens Gas Company in the Condition in Which it was When New.*

948 Building:	Summary.	Cost as of Jan. 1, 1920.
Old Generator House #1		\$666.62
New Generator House #2		299.00
Exhauster Room #3		66.00
Boiler House #4		191.52
Boiler House Extension #5		236.00
Engine Room #6		230.30
Pump House #7		62.70
Two Story Coal Bin #8		548.95
One Story Coal Bin #9		104.00
Garage #12		423.19
Exhauster House #13		25.00
Valve House #14		33.00
Range House #19		72.56
Paint House #20		14.33
Gasoline House #22		6.00
Office #30		580.00

Cost as of
Jan. 1, 1920.

Super'd Dwelling #31	
Coal Bin #40	490.74
General	187.90
	60.00
Total for buildings	\$4,297.81

949 Apparatus:

Old Generator House #1	235.00
New Generator House #2	265.00
Deep Well Pump House #21	225.00
Engine Room #6	125.00
Boiler House Extension #5	506.26
Overhaul engines and Exhausters	200.00
Overhaul gauge boards	75.00
Overhaul all pumps	100.00
Overhaul compressors	115.00
Total for Apparatus	\$1,846.26
Total for Buildings	4,297.81
Grand Total	\$6,144.07

950 Old Generator House #1:

Point up and repair brickwork at sills and eaves	\$98.82
New corrugated roof and monitor, including material ..	375.00
New galvanized iron flashing	63.00
1-New window 39" x 60" in place including framing ..	34.13
1-New single ply batten door, double hinged 5' 0" x 8' 6"	22.87
Repair transom over door	7.05
21 panes of glass	15.75
Replacing 25 purlins; 1" x 1" x 1/8" Angles	25.00
Replace two plates in operating floor and level several other plates	25.00
New Generator House #2:	\$666.62

Point up and repair brickwork	\$17.00
Repair brick charging floor	26.00
14 New window panes 12 x 14	10.50
Miscellaneous carpenter work	10.00
Repair corrugated iron roof	195.00
Repair tar paper roof over meter room	40.50
	\$299.00

	Cost as of Jan. 1, 1920.
Exhauster Room #3:	
Repair corrugated iron roof	60.00
Two glass panes in skylight	6.00
	<hr/>
	\$66.00
951 Boiler House #4:	
Repair roof	\$113.40
New flashing on roof	36.00
1—New 3' 0" x 7' 0" Batten Door	26.12
Repair wood work around doors	16.00
	<hr/>
	\$191.52
Boiler House Extension #5:	
Repair roof	\$200.00
Flashing on roof	36.00
	<hr/>
	\$236.00
Old Engine Room #6:	
Repair roof	\$187.50
Replace gutter and down spouts	42.80
	<hr/>
	\$230.30
Pump House #7:	
Point up and repair wall	25.00
Replace brick floor	36.26
Replace 2 window panes	1.56
	<hr/>
	\$62.70
Two Story Coal Bin #8:	
Repair side framing and bracing	250.00
Replace rubberoid roofing, 100 sq. ft.	8.00
Replace 7 window panes	5.25
Put in new D. H. window including sash, 34" x 6' 0"	250.00
	<hr/>
	\$548.95
One Story Coal Bin #9:	
Repair siding, struts and stringers	100.00
Repair 50 sq. ft. of rubberoid roofing	4.00
	<hr/>
	\$104.00
952 Garage #12:	
Replace 1 square of shingles	\$17.89
Replace 50' of 4" gutter	27.50
Replace 22' of 3" down-spouts	8.80
Replace 1—3' 0" x 8' 0" batten door	12.91
Replace 4 window panes	3.00

	Cost as of Jan. 1, 1920.
Replace rafters and purlins	119.03
Replace galvanized corrugated iron roof and repair side walls	218.75
Paint under side roof, 875 sq. ft.	15.31
	<hr/>
Exhauster House #13:	\$423.19
Repair roof and sides of galvanized corrugated iron	\$25.00
Valve House #14:	
Replace roof	\$33.00
Range House #19:	
Replace roof	72.56
Paint House #20:	
Repair floor	\$14.33
Gasoline House #22:	
Repair galvanized corrugated iron roof and sides	6.00
Office #30:	
Replace floors and stairs	275.00
Paint wood work and 2 rooms, 2 coats	200.00
Repair halls and rooms	75.00
Point up brickwork	30.00
	<hr/>
Super'd Dwelling #31:	\$580.00
Replace shingle roof	\$171.74
Paint outside of house 2 coats	150.00
Repair front steps, porch floor and railing	35.00
Point up 60' of 4" gutter, galvanized iron	33.00
Point up 50' of 3" galvanized iron down spouts	20.00
Paint inside of house	36.00
Repair 3 rooms	45.00
	<hr/>
Retaining Wall for Hard Coal #40:	\$490.74
Repair cement floor	12.90
Repair retaining wall	175.00
	<hr/>
General:	\$187.90
Repair of gas burners	\$60.00

	Cost as of Jan. 1, 1920
Old Generator House #1:	
Replace one cleaning door and frame	\$65.00
Replace on-ash pit door and frame	50.00
Replace purge valve seat	55.00
New Sheet in bottom course	65.00
	<hr/>
	\$235.00
New Generator House #2:	
New lining and checkers	\$200.00
New sheet in bottom course	65.00
	<hr/>
	\$265.00
954 Deep Well Pump House #21:	
New suction pipe and steam line	\$225.00
Engine Room #6:	
Overhaul engines and blowers	125.00
Boiler House Extension #5:	
Stack for #4 boiler	506.26

General:

Overhaul engine and exhausters	200.00
Overhaul gauge boards	75.00
Overhaul all pumps	100.00
Overhaul compressors	115.00

The Master: We will adjourn until the 26th at 9:30, with the understanding that I am going to finish this case.

Adjourned to Wednesday, May 26, 1920, at 9:30 a. m.

Last Complainant's Exhibit 88.

Last Defendants' Exhibit H.

955 NEW YORK & QUEENS GAS COMPANY
vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 26, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh, of Counsel for Defendant Dennis O'Leary.

Mr. Ransom: Mr. Spear, take the stand.

MAYNARD H. SPEAR resumed:

Mr. Ransom: In going over the record I find I have a few more questions in the nature of direct examination which I shall need to ask Mr. Spear at some time in the case—I am willing to do it now, or wait.

The Master: Do it now.

Mr. Neumann: I want to make an application with reference to one of the exhibits prior to Mr. Spear testifying.

The Master: Make your application.

Mr. Neumann: Will the complainant produce Exhibit 30?

956 (Mr. Ransom produces the exhibit.)

Mr. Neumann: Now I call the Master's attention to this exhibit: When the discussion of this was originally under consideration—and it is contained in the printed stenographic minutes at page 26, folio 77—the exhibit was withdrawn and the Master, prior to its withdrawal, asked this question:

"Q. Are you testifying to the genuineness of the signature?"

Now, what I want to direct the Master's attention to is that when that exhibit was introduced at the last hearing, it was introduced upon the theory that the Notary's certificate was authenticated. I now call your attention to the fact that there are three typewritten pages following the Notary's certificate.

The Master: What are those three pages following the Notary's certificate?

Mr. Neumann: Those three pages are the consents of stockholders.

The Master: To what? I saw those three pages when I admitted it in evidence; I assumed that it was a matter referred to in the body of the instrument; isn't that so?

Mr. Neumann: I may be in error, but I don't think so.

The Master: I did not read it carefully, but I assumed that to be the condition, that where something was attached to the paper I assumed it was made part of the paper by reference. If that is so, there is no reason why it should not be a part of it.

Let me see what it is—I saw those sheets.

957 Mr. Neumann: Under the circumstances I still move that they be stricken out.

The Master: Motion denied.

Mr. Neumann: On the ground that there is no proof of the signature.

The Master: Motion denied.

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6
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Mr. Neumann Exception
The Master Go ahead.

Direction examination continued.

By Mr. Ransom

Q. Mr. Spear, does the Consolidated Gas Company own all the stock of the New York & Queens Gas Company?

A. All but the shares held by the directors

Q. The qualifying shares?

A. Yes.

Q. And does the Consolidated Gas Company own any of the bonds?

The Master One moment those qualifying shares are held practically for the Consolidated

The Witness Yes.

Q. Does the Consolidated Gas Company own any of the bonds of the New York & Queens Gas Company?

A. Not that I know of.

Q. That is, the bonds are held generally by the public?

A. Yes, and they are very generally distributed.

Q. For coupon bonds?

A. Yes.

The Master How much?

The Witness Five per cent.

The Master How much, in amount?

The Witness \$816,000

958 Mr. Van Steenburgh Pardon me, when do they mature?

The Witness 1934.

Q. Has the New York & Queens Gas Company paid any dividends upon its stock since 1914?

A. It has not.

Q. Has it paid interest on its bonds throughout?

A. It has.

Q. Has it borrowed the money to pay the bonds and interest?

Mr. Neumann One moment. Objected to as incompetent, irrelevant and immaterial, the books, if properly kept, would be the best proof of that.

The Master I will let him say.

Mr. Neumann Exception

The Witness It has, several times.

Q. During 1919 and 1920?

A. Yes, and once in 1918.

Q. That is, the interest is payable semi-annually?

A. It is, February and August.

Q. And during 1919 and 1920, and part of 1918, it had to borrow the money to pay for the bonds and interest?

A. It has.

Mr. Tobin: Same objection, if your Honor please.

Q. It also had to borrow the money for the construction of the Douglaston extension?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: I will let him say whether they did in fact borrow the money and not whether they had to do it.

959 Q. Did they?

A. Yes, sir.

Mr. Neumann: Exception.

The Master: I suppose, to correct the record, Mr. Spear, or rather to get it more correct, your answer to Judge Ransom's inquiries, did you have to borrow the interest, I will limit that to this extent: Did you in fact borrow money to pay the interest on these bonds from time to time?

The Witness: We did; we didn't have the money to do it.

Mr. Neumann: I move to strike out "we didn't have the money to do it."

The Master: I will take that.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: The testimony that I am allowing to stand is that they did borrow money, that they did not in fact have the money on hand; is that correct?

The Witness: That is correct.

The Master: You did in fact borrow money to build the Douglaston extension?

The Witness: We did.

The Master: You did not have the money on hand?

The Witness: We did not.

Mr. Tobin: If the Master please, I think our objection would run to the way the Master's questions are put.

The Master: I will note your objection to the questions as I have put them, and allow you an exception.

Q. Mr. Spear, how recently have you had to borrow money to meet current bills?

960 The Master: I will sustain the objection to that.

Q. Have you had to borrow money to meet current bills?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and not the proper way of proving it.

The Master: I will overrule that.

Mr. Neumann: Exception.

The Witness: We did.

Q. And you didn't have the money on hand to meet them?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A: Borrowed \$20,000 on May 17th.

Q: What is the present cost to you of generator coal, to your company?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Isn't that in the record?

Mr. Neumann: The contracts are the best evidence of that.

Q: What is the present price and what are the present elements of cost that you are now currently paying?

Mr. Neumann: One moment. In the first place the question itself may be meaningless because it is too broad.

The Master: Don't spend any time on that. How recently have you bought generator coal?

The Witness: Bought generator coal this month.

The Master: From whom?

961 Q: The Witness: From the Lehigh-Wilkes-Barre Coal Company.

The Master: How much?

The Witness: I don't recall the figures, between six and seven hundred tons.

The Master: I mean how much in money, how much did you pay for it, what is the price?

Mr. Neumann: I object to that.

Mr. Tobin: Same objection.

The Master: That is what you want, is it, Judge Ransom?

Mr. Ransom: I want to know the current price.

The Master: Well, isn't this the last thing he paid?

Q: Is there any difference between the last price you paid and the price for the next you were to receive?

A: Yes, a big one.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and purely speculative.

The Master: I have the situation. Next question.

Q: Have you been notified of the price which will prevail between now and September?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial; the present state of the record is they make their contracts in April of each year and this is all in contradiction.

The Master: Judge Ransom, I will let you prove that the price has gone up, by some direct manner, by some direct question 962 as to some precise thing that has happened, but I think your question is a little too indefinite.

Mr. Tobin: If your Honor please, more than that, I don't think

this witness is qualified to say as to what the contract price is because this company don't make the price.

The Master: That is why I am limiting Judge Ransom to some direct question.

Mr. Tobin: I think it is unfair.

The Master: I have ruled on it, next question.

Q. Have you ascertained, by personal inquiries from the Lehigh & Wilkesbarre Coal Company, the price or prices which will be charged between now and September?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, absolutely contradictory to the present state of the record; the man who made the coal contracts was here.

Mr. Ransom: He said there were no contracts, couldn't make any contracts.

The Master: Objection overruled.

Mr. Tobin: More than that, it is mere hearsay and there is no opportunity for us to cross-examine on an issue of that kind.

The Master: Objection overruled, I am going to let the witness say whether he has ascertained, from inquiry from the Lehigh & Wilkesbarre Coal Company, just yes or no.

The Witness: I have.

Q. What did you ascertain as to the price?

The Master: I will sustain the objection to the question for the time being.

What did you do, who did you speak to, how did it come about?

663 The Witness: I asked Mr. Addicks what the present price of coal was and what the price would be.

The Master: Stop there, where you are, I will strike out that statement, let him get to the coal company.

The Witness: Then I telephoned the Lehigh & Wilkesbarre Coal Company and asked them what the price would be.

The Master: Asked who?

The Witness: A man in Mr. Heilner's office, I didn't get his name.

Mr. Tobin: Oh, if the Master please, that ought to go out.

The Master: I have ruled on it.

Mr. Ransom: All right, I will have to bring Mr. Addicks.

Mr. Van Steenburgh: Put in an objection by all the defendants.

The Master: The record shows that an objection made by one defendant, Mr. Van Steenburgh, will be for the benefit of all.

Q. Did Mr. Addicks give you a written quotation of the Lehigh & Wilkesbarre Coal Company for coal between now and the 1st of September?

Mr. Neumann: Objected to.

The Master: Objection sustained.

Q. What price are you now paying for bituminous coal?

Mr. Neumann. Objected to.

The Master. Objection sustained.

Mr. Ransom. On what ground?

The Master. On the ground that that is not the way to prove it.

964 By my inquiry as to the generator coal I brought out that the question you asked him in that general form was not a proper question and I am not going to let you do it now.

Mr. Ransom. The situation is a little different as to bituminous coal.

The Master. I will let him say whether he bought any, what they paid for it and whether he talked to any coal men, but general questions are improper.

Q. Have you talked, within a few days, with any dealers in bituminous coal with respect to the price of coal for present and future delivery?

A. I have.

Mr. Neumann. That is objected to.

The Master. Objection overruled, the witness should be permitted to state that he talked with somebody.

The Witness. I called up the Shawnee Fuel Company.

The Master. Strike that out. Who did you talk to if you know?

The Witness. Mr. Terrio.

Q. Did you know you were talking to him?

A. No, except he answered to the name Terrio.

The Master. I won't take that. Don't you know who you talked to?

Q. You did talk to various people?

A. I did.

The Master. Over the telephone?

The Witness. Yes.

Q. Did you know the voice of any of these people?

A. No.

Q. Have you a bill for the last bituminous coal that you bought?

A. I have.

965 Q. Will you produce it?

A. (Witness produces paper.)

Q. This is for coal purchased by your company within the month of May, 1920?

A. It is.

Q. And the coal had been delivered?

A. Yes.

Mr. Neumann. One moment, that is objected to as incompetent, irrelevant and immaterial, it is not within the province of this witness to so testify, he ought to be qualified as to deliveries.

The Master: Before ruling on it, I will ask you what do you know?

The Witness: I saw it at the dock.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And this is a bill which you received from the New York Edison Company for the coal?

A. It is.

Q. What does that make the cost of coal per ton?

Mr. Neumann: One moment, objected to.

The Master: Objection sustained, I am not going to take prices set by the New York Edison Company.

Mr. Ransom: Then I will bring these men and prove it.

The Master: I won't take a price fixed by the New York Edison company as an isolated instance of a price showing market price; don't think it is the proper way of proving it.

Mr. Ransom: I offer the bill in evidence.

Mr. Neumann: Objected to.

The Master: Objection sustained.

66 Mr. Ransom: I will have it marked for identification.

Marked Complainant's Exhibit 80 for Identification.

Mr. Ransom: It will take a week to bring all these men here.

The Master: That is no justification for my permitting anything at I don't think is in accordance with the rules of evidence, just cause it takes time.

Mr. Ransom: I think it is in accordance with the rules of evidence.

Q. Mr. Spear, have you made a comparison of the average rate of pay of all employees in the works, shops and offices, practically, during 1919; that is, the actual average rate per hour with the present actual rate of pay per hour in those same departments as of May, 20?

A. I have.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, too vague and indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

Q. In the works, comparing the actual average rate of pay per hour for the different classes of labor during the entire year 1919, with the present average rate of pay for all classes of labor for works, what has been the present increase?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

Mr. Tobin: If your Honor please, further than that, Judge 7 Ransom is attempting to make a comparison of a five months' period as against a full year.

The Master: That won't make any difference on averages.

Mr. Tobin: Well, more than that, he can't make a fair comparison

because the year has not spent itself and the labor market may be entirely different. He is taking a high peak price because it happens to be a high peak and comparing it with 1919.

The Master. I will take it for what it is worth but I think he should state what the average was for 1919.

Mr. Tobin. We are at the peak now, your Honor.

The Master. I understand that.

Q. What was the average in 1919, Mr. Spear, for the works?

Mr. Neumann. Further than that, his question is so broad that it might require considerable cross-examination to bring out what the real facts are.

The Master. That doesn't worry me so long as the question is proper.

The Witness. The average at the works for 1919 was 43435 cents per hour.

Q. And what is the average at the works as of May, 1920?

A. 53.83 cents per hour.

Q. An increase of what per cent?

A. 23.92 per cent.

Q. Did you make a similar comparison—

Mr. Tobin. We object to the introduction of this testimony at this time; we don't think it is fair to introduce these averages; they are not fair averages.

968 Q. The Master. How do you know they are not?

Mr. Tobin. He is taking the peak at this time in comparison with the rest of the year; it is simply a guess at its best.

The Master. It is not a guess, it is an absolute fact.

Mr. Neumann. In addition to that, there is no foundation for any of this testimony.

The Master. Objection overruled.

Mr. Neumann. Exception.

Mr. Tobin. Then again, there enters into it the conclusion that he has drawn here as to the method he used to arrive at this particular percentage.

The Master. I will let you cross examine.

Mr. Tobin. But we haven't anything in the record to start to cross examine on; he simply makes a broad statement here and you can't get behind it so easily as it might be shown.

The Master. I could get behind it very easily.

Mr. Ransom. They have had all these payrolls.

The Master. I could bring out in ten minutes whether it was a fact or not—go ahead.

Q. Have you similarly made a comparison of the actual average rate of pay per hour in the shop during 1919 and the present time?

Mr. Neumann. Objected to on the ground it is incompetent, irrelevant and immaterial, based on hypothesis and supposition.

The Master. Overruled.

969 Q. Mr. Neumann. Exception.

The Witness: I did.

Q. What was the average rate of pay per hour for various classes of labor in the shop work during 1919?

Mr. Neumann: Same objection.

The Master: Same ruling.

A. 41.48 per hour.

Q. What is the average rate of pay per hour for all classes of labor in the shop?

A. 49.82 cents per hour.

Q. An increase of what percentage?

Mr. Neumann: Same objection.

The Master: Overruled.

A. 20.11.

Q. Have you made a similar comparison of the average rate of pay in the office during 1919, and the present time?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: I have.

Q. What was the actual average rate of pay per hour in the office?

Mr. Neumann: Same objection.

Q. For different classes of employees?

Mr. Neumann: Same objection.

The Master: Overruled.

The Witness: I figured that by the week because they are weekly employees in the office; I don't recall the exact figure and I haven't it here, but the increase—

The Master: No.

Q. Do you know what the increase was?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, he hasn't got the figures on 970 which it was based; that is purely getting something out of the air.

The Master: I took it out of the air five minutes ago and disposed of it and you want to make a speech about it.

Q. Have you likewise made a study and comparison of the average price of materials other than coal and oil, during 1919 and the present time?

A. I have.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. Mr. Spear, have you at my request made a computation of the cost of the distribution of gas at the present time?

A. I have; that is based on 1919 figures; the 1919 figures based on the present cost.

Mr. Neumann. One moment, I want to get that clear. Will the stenographer read that answer?

(Answer read by the stenographer.)

Q. That is, you have ascertained the extent to which the cost of the distribution of gas, per thousand, has increased as compared with 1919?

A. Yes.

Mr. Neumann. One moment, objected to on the ground it is incompetent, irrelevant and immaterial; the exhibit, when introduced, will speak for itself.

Mr. Ransom: There may not be an exhibit.

971 Mr. Neumann: Well, you are evidently laying the foundation for one, and if you are not, you are fooling away the Court's time.

Q. Based upon an assumption of the same sales as in 1919?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and based on an assumption.

The Master: Overruled; it is simply an inquiry as to whether he made a calculation.

The Witness: Yes.

Mr. Neumann: Exception.

Q. As you have testified, you are familiar with all the elements of distribution of the company's gas and have charge of that as manager?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and counsel's question presupposes that that is the testimony and this witness has never testified to that fact.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: Yes.

Q. On the basis which you have indicated, what is the present cost per thousand of distribution of gas?

Mr. Neumann: Objected to on the ground it is immaterial.

The Master: Objection sustained.

Q. Is this a statement prepared by you (exhibiting paper)?

A. It is.

Q. In the manner in which you have indicated?

A. Yes, sir.

Q. Covering the cost of distribution, the taxes and the renewals and replacements, based on the prices being paid for the labor and material entering into the cost of distribution as of May 25, 1920?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, and the paper itself will speak for itself when it is introduced in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes, sir.

Q. And in this statement you have set forth the various items making up the cost of distribution and other expenses?

A. I have.

The Master: Where did you get the bituminous coal item?

Mr. Ransom: That is not in distribution.

The Master: Oh, I see. Well, where did you get all these items from?

The Witness: I took the account as of last year or—cost for 1919, and added to it the increase in the cost of labor and material as of May 25, 1920.

The Master: What kind of material?

The Witness: Any materials that entered into the distribution.

Q. You mean repair materials?

A. Yes.

The Master: And those prices have not been proved here, have they?

Mr. Neumann: No.

Mr. Ransom: Many of them. The vouchers are all in.

Mr. Tobin: If your Honor please—

The Master: Are these figures based only on the vouchers that are in evidence, that is what I want to know, or is there some calculation based on something else?

Mr. Ransom: Well, let's see.

Q. As, for instance, in Salaries General Office, you put in here the 1920 salaries rather than the 1919 salaries?

A. Yes.

Mr. Neumann: And there is no testimony as to the 1920 salaries.

Mr. Ransom: Oh yes there is; that was brought out by you and the Master at the last hearing.

Q. And with respect to insurance, you have put in the 1920 cost of insurance rather than the 1919 cost of insurance?

A. I did.

Mr. Neumann: There is no proof as to insurance.

Q. Well, you know what the company pays for insurance?

A. I do.

Q. You have charge of the insurance matters?

A. I pass the bills.

Q. And you have charge of all these matters here?

A. Yes.

Q. And these represent your best knowledge and judgment as to what the 1920 expenses for these items would be, assuming the same sales in 1920 as in 1919?

A. Yes.

The Master. And then assuming the prices would continue during the year?

The Witness: Yes, the same prices continuing during the year.

The Master: Well, now, are there any prices in there that 974 are not evidenced by vouchers in evidence? That is what I want to know?

Mr. Neumann: Suppose you look at it, Mr. Spear.

The Master: Well, Mr. Spear ought to know how he made it up.

Mr. Ransom: Well, I take it that with respect to some of these items they do represent the witness' judgment, some of the matters on which bills have not yet been rendered.

The Master: Well, here is the situation: It occurs to me, because of the inquiry as to bituminous coal, there may be some repair labor in there that he may have rung up somebody and somebody may have said, Why, the price is a dollar and a half now, and he has based his figures on that, and I do not think that is entirely reliable. I do not think I could take that.

Q. Where you assumed, with respect to labor elements, you assumed the increase in the cost of labor which you testified to?

A. Yes.

Q. And with respect to the various elements of materials entering into the repairs and into supplies, and the like, you took the increase which you know has already taken place in the cost of that class of material, as compared with 1919?

Mr. Neumann: Objected to on the ground it is immaterial.

The Master: I will sustain that question as a leading question for once. That is the only one I have ruled out as a leading question, and I think that is a good illustration of a leading question that is dangerous. I will let Mr. Spear say where he got the figures.

The Witness: Well, I took the bills for 1919.

The Master: Yes.

The Witness (continuing): And compared the same bills for the same material for April and May, 1920.

The Master: Actual bills?

The Witness: Actual bills.

Mr. Neumann: To you?

The Witness: Yes.

The Master: Was there any item that you recall in this statement that is based upon any inquiry or statements made to you by somebody else, or are they all based in the way that you have de-

cribed, upon actual payments made this year, as against payments made last year?

The Witness: Yes, there are some items there; for instance, the relief department and pensions; I inquired as to what the doctors were getting now as against last year, and I found there was an increase there.

The Master: What do you mean the doctors?

The Witness: In the Mutual Aid Society.

The Master: Well, how does that affect you?

The Witness: For taking care of our employees.

The Master: How does that affect you?

The Witness: We have to pay the doctors.

56 Q. That is, you have to contribute?

A. Yes.

The Master: You haven't had any doctors' bills this year?

The Witness: We have had some, yes, but I did not compare them.

The Master: Whom did you inquire of?

The Witness: Mr. Van Blarcum, the Secretary of the Mutual Aid Society.

The Master: What else, if you recall?

The Witness: Then I estimated, to the best of my knowledge, the increase in the amount of cost to us this year of the rate case.

Q. The item of real estate rents paid in this statement, did you enter your 1920 rents of the buildings occupied by you for your office, other than your 1919 rents?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it.

The Master: I will overrule that.

The Witness: I did; and I added to that two floors in the building right next to us which we expect to get into in the next couple weeks.

The Master: That you have already rented?

The Witness: Yes.

The Master: The price agreed upon?

The Witness: Yes.

The Master: Now, as I understand it, the only items that are not evidenced by vouchers or other matters in the record is the information you got about the doctors' expenses and what you have figured on the rate case?

77 Mr. Ransom: That is the legal expenses and other expenses in connection with the rate case, as to which he used his best judgment and opinion.

Mr. Tobin: If your Honor please, that is all that the Master has been able to pick out himself. Now, nobody knows just how this table is made up here, there is a list of at least twenty or twenty-five items.

The Master: I will find out. Is there any other?

The Witness: Legal expenses.

The Master: That is part of the rate expense.

The Witness: No. We took the legal expenses, and then took the rate expenses.

The Master: Is there any other element that you know about that is estimated?

The Witness: No.

The Master: Are you sure about that?

The Witness: Yes.

The Master: As I understand it this table is made up on vouchers and payments actually made by your company in 1919 as compared with 1920?

The Witness: Yes.

The Master: Except this additional rent that you figured on paying?

The Witness: Yes.

The Master: The doctor expenses that you got from the Mutual Aid Society Secretary?

The Witness: Yes.

The Master: The legal expenses and the rate expenses?

The Witness: That is right.

The Master: That is all?

The Witness: That is all.

978 Q. Now, with respect to this matter of the contribution to Mutual Aid Society, the amount of such contributions increases as the rate of compensation of labor increases?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, not the proper way of proving it.

The Master: Overruled.

A. Yes, it is; it depends on the payrolls.

Q. And in the increase which you have got here in that figure amounting to only a few dollars, you have taken into account the increase in the rate of pay of your employees?

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Now, the renewals and replacements figures——

The Master: The chances all are that I shall disregard the 1920 figures except as bearing upon a finding that the expenses in 1920 will be no less and probably more than in 1919.

Mr. Neumann: Well, why take that?

The Master: Well, I think I have got to have some testimony to make that finding, but I am inclined to think from what I see of the case now that I shall probably base my finding on the entire year 1919 as I did in the Consolidated case for the eight months of 1919.

Mr. Neumann: No court will adopt a rule that a part of a year is a criterion on which a statute can be declared confiscatory.

The Master: I am not worrying about that.

The renewals and replacements item you used was the 1919
e?

It was.

And the taxes and interest charges, you took the 1919 figure?

Yes.

Not having your 1920 figure as yet?

Yes.

And made up in the way in which you have indicated this
ment is correct according to your best knowledge and judg-
?

It is.

Ransom: I offer it in evidence.

The Master: I will receive it in evidence with the reservation that
all in analyzing the statement disregard the items of legal ex-
penses and rate expenses as being estimates of this witness.

Mr. Neumann: May we not put our objection to it on the record

The Master: Yes.

Mr. Neumann: Objected to on the ground it is immaterial,
irrelevant and incompetent, shown by the witness' own testimony to
not correct, based on suppositions, based on presumptions and
conclusions, based on hearsay and other incompetent proof.

The Master: Objection overruled.

Mr. Tobin: We also make the further objection, if your Honor
pleases, that it is not proper proof in that he has to take a period of
time which is not a proper average; that is, in other words, they
have attempted to take a period of time in 1919 and a period
of time in 1920, but we maintain that is not a proper method
of taking an average, and more than that it is simply a
conclusion or hypothesis of what these figures may be in the year 1920.

The Master: Objection overruled; I will take it.

Mr. Tobin: Exception.

Offer marked Complainant's Exhibit No. 90.

Mr. Spear had there been grading and filling done on the land
owned by the works of the New York & Queens Gas Company prior
to August, or land thereafter occupied by the New York & Queens
Gas Company, prior to the taking over of the property by your
company in August, 1904?

Mr. Neumann: Objected to on the ground it is immaterial, irre-
levant and incompetent, not the proper way of proving it, no
foundation having been laid for it at the present time.

The Master: Does the witness know?

Mr. Ransom: Why, he was there.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: There was.

Q. You knew about it?

A. I did.

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. A substantial part of it was done under your direction?

A. Practically all of it was done under my direction.

Q. Have you estimated the quantity and cost of such work done prior to August, 1904, on this land?

981 Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. I have.

Q. What is your estimate or calculation?

A. Approximately 5,600 yards.

Q. And do you know and did you know the cost of such grading and filling at that time?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

Q. What was it?

A. One dollar a yard.

Mr. Ransom: That is all.

Mr. Neumann: Are you through with this witness Spear now, Mr. Ransom?

Mr. Ransom: I think so.

Mr. Neumann: Can't you make a direct statement, Judge?

The Master: Proceed with your cross-examination.

Cross-examination.

By Mr. Neumann:

Q. Now, Mr. Spear, you testified with reference to moneys that you had to borrow for this company. Do you recall what rates of interest you paid upon those moneys so borrowed?

A. Six per cent.

Q. In every instance?

A. No, the last loan is at 7%.

Q. That is more than the statutory rate?

Mr. Ransom: Objected to as an incorrect statement of the statute.

982 The Master: Objection sustained.

Q. Did you borrow the money in the form of cash or by the sale of securities?

A. Cash.

Q. And you paid 7% interest for it?

A. Yes.

Q. To whom did you pay that?

A. The Consolidated Gas Company.

Q. When?

A. The last loan, I think, is dated May 17th.

Q. What year?

A. 1920.

Q. May 17, 1920, and you paid 7%; and what was the amount of that loan?

A. \$20,000.

Q. And what is the date of maturity on it?

A. On demand.

Q. Now, the loan previous to that was for how much money?

A. \$50,000.

Q. What rate of interest?

A. At six per cent.

Q. From whom?

A. Consolidated Gas Company.

Q. Is that also on demand?

A. Yes.

Q. And the loan previous to that—did you give the date of that?

A. I cannot recall the exact date, but it was about the first of the year.

Q. The present year?

A. Yes.

Q. Well, the loan previous to that?

A. I do not recall just when that was.

Q. Some time during 1919?

A. Yes.

83 Q. From whom?

A. Consolidated Gas Company.

Q. At what rate of interest?

A. Six per cent. All our loans from the Consolidated Gas Company are at seven per cent now, were changed to seven per cent.

Q. You mean those that were previously six per cent have now been raised to seven per cent?

A. Yes.

Q. So that you are paying to the Consolidated Gas Company seven per cent on all moneys that you have loaned from them that have not been repaid, is that right?

A. That is correct.

Q. Do you know what the total amount that you now claim you owe the Consolidated Gas Company is?

A. I do not know the exact amount, but between \$500,000 and \$600,000.

Q. And upon that amount you are paying seven per cent interest from what date?

A. It is figured quarterly.

Q. You evidently misunderstood my question.

The Master. When did the seven per cent rate start?

The Witness. I think it was about the 1st of April.

Q. 1920.

A. 1920.

Q. Have you paid any interest to the Consolidated Gas Company at the rate of seven per cent on any amount at any time?

Mr. Ransom. Objected to as vague and indefinite.

The Master. Oh, I understand it. Have you actually paid any money you mean, or by check, on account of any of this interest?

Mr. Neumann. Yes.

984 The Witness. No, we have not actually paid them yet.

The quarter ends this month, and a check will be drawn the latter part of this month.

Q. So that until the end of this month there will have been no actual payment to the Consolidated Gas Company of interest on any sum at the rate of seven per cent?

A. Yes.

Q. At the present time it is simply an agreement to pay that amount, is that correct?

A. That is correct.

Q. No actual payment?

A. I do not think there is.

Q. Are you sure?

A. No, I am not positive, but that is the best of my recollection.

Q. Is there any way of refreshing your recollection?

A. Yes, I can look it up in the books.

Q. In your office?

A. Yes.

Q. You could not look it up by any books that are in court now?

A. No, they would not show the rate of interest.

Q. When you obtained the loan of this money from the Consolidated, is there any evidence in writing as to the amount?

A. The amount of the loan?

The Master. Did you give a note?

The Witness. Oh, yes, we gave a note for it and a receipt for the check.

Q. A note for it and a receipt for the check, and that note contains the rate of interest and the amount of the loan?

985 A. I do not think the interest is stated. It gives the amount of the loan, but I do not think it states the interest rate.

Q. What does it state with reference to interest?

A. With interest.

Q. Without mentioning any figure?

A. That is my recollection of it.

Q. And the agreement to pay interest is an independent agreement not set forth in the note?

A. That is my recollection of it.

Q. Well, is that correct?

A. I would say so from memory, yes.

Q. Well, can you advise yourself as to that and be able to testify directly to that question?

A. Yes, I could.

Q. You stated that you borrowed these moneys from the Consolidated Gas Company. Did you mean the Consolidated Gas Company or the Consolidated System?

A. The Consolidated Gas Company of New York.

Q. Did your company ever borrow any moneys from any of the subsidiary companies of the Consolidated Gas Company?

A. No, we have not.

Q. Are you sure of that?

A. Yes.

Q. Well, are any of the subsidiary companies creditors of your company, or is your company a creditor of any of the subsidiary companies of the Consolidated?

A. Well, we sometimes buy materials from them, which would make us a debtor.

Q. And in those instances do you have to pay the companies interest on the amount you owe?

6 A. Oh, no.

Q. Are you familiar with the State tax reports, or reports made to the State Tax Departments?

A. Yes.

Q. Now, you stated that you paid the interest quarterly?

A. Yes.

Q. Do you compound the interest or do you simply pay the interest quarterly and the principal sum remains the same? Do you understand my question?

A. We pay separately the interest alone.

Q. And the principal sum remains the same?

A. Yes.

Q. In other words, you do not pay interest on interest?

A. No, we do not.

Q. Now, Mr. Spear, getting back to the works, what is your capacity for the storage of coal?

A. About 2,000 tons, I would say now.

Q. And that would be how many pounds?

The Master: Oh, don't go into that. Next question.

Q. You testified with reference to the taking of an inventory of?

A. Yes.

Q. That was done, as I understood, monthly?

A. Usually monthly. Of course, there were conditions in the winter time which might prevent taking an inventory, such as heavy

snows. Some of the coal is on the outside, you know, and not under covered bins.

Q. And in those isolated instances when do you take the inventory?

A. Usually around the first of the month.

987 Q. I mean taking those isolated instances you are talking about in the winter?

A. Yes, I say usually around the first of the month.

Q. That would only be so when there was a severe winter?

A. Yes.

Q. You take the average winter, the average mild winter, and you take an inventory every month?

A. Yes.

Q. The daily record of manufacture contains the amount of coal used daily, and then a monthly balance, that is correct, is it not?

A. Yes.

Q. Do you check that with the inventory taken at the end of each month?

A. Yes.

Q. Which figures are the figures which find their way into the books, the ones from the work sheets or the inventory?

A. The ones from the work sheets, unless we find, as we do sometimes, a variation between the inventory and the amount shown on the sheet, and we might charge more in the used column.

Q. Those are what you call adjustments, the same as the adjustments of oil?

A. Yes.

Q. Where would there be an indication of what adjustments were made with reference to coal?

A. It should be on the work sheet as added to the used.

Q. So that if the work sheets—the daily record of manufacture, to be precise—does not contain any adjustments at the end of the month, it is a fair supposition that the inventory at the 988 end of the month agreed with the figure; that were set down as the daily use and totalled at the end of the month; is that correct?

A. Yes, except in a case of screenings transferred to boiler coal.

Q. Well, that would be shown by a separate item?

A. As screenings transferred, yes.

Q. What I am getting at is this, Mr. Spear: Is it fair to assume that if there are no adjustments made in the column on the daily record of manufacture which indicates the coal used during the month, therefore the total for that month, the total of the daily use for that month checked with the inventory taken at the end of the month?

A. Yes, sir, if the inventory were taken that month. One other condition that I recall—

Q. Assuming that the inventory is taken—

The Master: Let the witness state what other condition.

The Witness: There are conditions which sometimes turn up in a small works like ours, where we have trouble in getting labor. I have seen conditions there when Mr. Morrison has had to go in and make gas because the gas-maker has not shown up in the morning and we were short of help. If that condition existed around the first of the month, he would not take his inventory.

Q. Generally speaking, then, you do take your inventory at the end of each month, of coal?

A. Yes.

Q. I am talking in general, not of these isolated or exceptional incidents that might occur anywhere.

989 A. Yes. He might find also on taking inventory that he was over on generator coal and under on boiler coal, due to some error made, and—

Q. Some error where?

A. Possibly in his previous figures, and then would not transfer dust—or screenings.

Q. In other words, he would use his own discretion as to whether the records were correct or not, and change them at the end of the month with the inventory?

A. No, he would not do that without talking to me about it.

Q. Well, you and he together, then, would change those records if they did not check with your inventories?

A. Yes, we might transfer less screenings than had been turned in by the man who carts the screenings over.

Q. Yes. In other words, if your daily record of manufacture did not check properly with your inventory at the end of the month, you would make the daily record—you and Mr. Morrison would make the daily record conform to the inventory; is that correct?

A. We would make an adjustment; yes, sir.

Q. So that you take as the criterion the inventory and not the daily record that is put down there as it is used; is that correct?

A. Well, the inventory is considered with that.

Q. Yes, but where there is an error between the daily record and the inventory at the end of the month, the inventory controls; is that correct?

Mr. Ransom: He has not said that.

A. If the inventory is taken, yes.

990 Mr. Neumann: Yes, he has said it.

Mr. Ransom: He has not.

Mr. Neumann: Yes, he has.

The Master: Next question, Mr. Neumann.

Mr. Neumann: May I have that last question of mine, before the witness Ransom testified, read?

The Master: Read it.

(The stenographer read the last question and answer.)

Mr. Ransom: Yes, if the inventory is taken.

Q. Mr. Spear, what is your average monthly consumption of coal?

The Master. What kind of coal?

Mr. Neumann. Generator coal.

A. You mean at the present time?

Q. Well take for the year 1919.

A. Oh, I could not tell that without figuring it.

Q. You have to determine how much coal should be sent to your company, do you not?

A. I do.

Q. That is solely within your control?

A. It is.

Q. And you determine when deliveries should be made?

A. Yes.

Q. What factors do you take into consideration when you give such an order?

A. I get the works report about the second or third of the month; I go over those figures and then I go back over several days' use of coal for the previous month, and estimate about how long the coal on hand will last, and if we have plenty of room and coal is coming in easy I order more so as to keep our bins pretty well filled.
991 Sometimes I have to get down pretty low on coal, because it is pretty hard to get at times.

Q. When do you find coal harder to get, in the summer or in the winter?

A. In the winter time, where there is much ice in Flushing Creek and Flushing Bay.

Q. No, I am talking about from the company, irrespective of climatic conditions.

A. I would say right now it is the hardest time I have ever known to get coal.

Q. What is that?

A. Usually we have a great deal more coal on hand than we have at the present time.

Q. Taking the average of years, what is the period of the year that it is easiest to get coal?

A. Well, with us I think we can—our experience has been that we can get it through the Consolidated Gas Company at any period of the year just about the same.

Q. Irrespective of winter or summer?

A. Yes, because our requirements are so small compared with theirs.

Q. Yes, and you have a contract in conjunction with their contract, that insures you delivery over a year?

A. Yes. Well, now just a minute, you say if we have a contract. How do you mean?

Q. I am talking about general conditions, generally speaking; I am not talking about this exceptional condition now.

A. Yes, generally.

Q. How and in what quantities do you obtain your coal, average?

A. Between 600 and 700 tons of generator coal in the barge.

992 Q. And when are those deliveries made?

A. As I order them.

Q. I mean generally speaking how do they average, one delivery a month, or two deliveries a month?

A. No, sometimes we get two, sometimes one; sometimes it might be six weeks.

Q. Before you get a delivery?

A. Yes.

Q. And that would depend on the time you put in the order for it?

A. It depends on how coal is coming in to tidewater.

The Master: Well, it would depend, too, on your requirements, and how you ordered it, would it not?

The Witness: Yes.

Q. Suppose instead of ordering 600 tons you ordered 1,200, that would be within your province, would it not?

A. We could not get it in the dock, there is not water enough. We have to get between 600 and 700 tons on a 1,000 ton barge.

Q. But you could get two barges, could you not?

A. Oh, yes.

Q. There would be no obstacle to you getting two barges, would there, if you ordered them at any particular time?

A. Well, in ordinary conditions, no.

Q. Or three barges, either, would there?

A. Well, it would depend on how much storage space we had.

Q. Yes, you testified you had storage capacity for 2,000 tons.

A. Yes, that is only three barges.

993 Q. Yes, that would be three barges; assuming your pile went down to 300 tons you could order two barges and have them delivered, could you not; there would be no obstacle in the way of that, would there?

A. Well, the only obstacle would be the impossibility of getting it.

Q. Impossibility of what?

A. Of coal getting into tidewater. For instance, only last month we could not get any coal from tidewater, and we had to get coal from Astoria to keep going.

Q. Why?

A. Because our stock was getting too low.

Q. Why could you not get it from tidewater?

A. Because there was none coming in.

Q. I am talking about general normal conditions, Mr. Spear.

A. Well, you were asking me what obstacles there would be in the way of getting three barges, and I am explaining those are the obstacles.

Q. Generally speaking, under normal conditions?

A. There are times that I have gotten two barges in, one following the other within two weeks.

Q. Yes, that is what I wanted. You have stated you order the coal as you need it. Flushing Bay freezes over during the winter, does it not?

A. Sometimes.

Q. It did during the year 1919?

A. It did.

Q. And it has prior to that time, too, to your knowledge?

A. Twice to my knowledge.

994 By the Master:

Q. Only twice?

A. Yes.

Q. In all the years?

A. Yes.

Q. Rather unusual for it to freeze over?

A. Yes, for this reason, your Honor—

Mr. Neumann: No, I object to that, if the Court pleases. "Rather unusual" is a characterization. I am trying to bring out the facts here and not characterizations.

Mr. Ransom: Let the witness finish his answer.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: The Brooklyn Ash Removal Company have a contract to take the ashes from Brooklyn to fill in the meadows, which are about a mile beyond our dock, and they keep that open with scows running through constantly.

Q. That has continued for how many years?

A. They have been on that now I guess for six or seven years. Prior to that time the "El Boyer" used to run through carrying freight from New York to Flushing; she used to break the channel so all we had to do was to break the channel to the dock to get a barge in. Last year we were not interfered with in our oil supply at all; we got oil in by barge right along, whereas the year before we had to get it in by rail.

By Mr. Neumann:

Q. That was in 1917?

A. Yes, 1917-1918.

The Master: I assumed, Mr. Neumann, that you had some point you wanted to develop.

995 Mr. Neumann: I have, yes.

The Master: That is the reason that I let you go on, but if I do not get your point pretty soon I will have to cut you off.

Mr. Neumann: I have a point, and I will develop it if the witness does not fence with me.

The Witness: I am not fencing, Mr. Neumann, a bit; I am trying to answer your questions as they are put.

Q. In the winter of 1919 you could not get your usual and normal supply, and by the same methods that you did, by reason of the fact that Flushing Bay was frozen over; that is true, is it not?

A. No, it is not.

Q. Isn't it?

A. No, it was due to shortage of coal.

Q. Was Flushing Bay frozen over during the year 1919?

A. No, the channel was open the entire time.

Q. No part of the time that it was frozen over?

A. No.

Q. You had to pay for the carting of coal in addition to your contract price, over and above what you did in other normal years?

A. Yes.

Q. As compared with 1919; that is correct, is it not?

A. Yes, that is right.

Q. And what was that due to?

A. Labor conditions, increase in the cost of labor and horses and trucks, and automobile trucks.

Q. Did you get your supply of coal during the year 1919
996 in the usual way that you got it in other years, or was there something extraordinary with reference to the year 1919, as to your deliveries of coal?

A. We did, but I think we got some coal from Astoria by truck and also from Ravenswood, where the barge had not come in on time and we needed a few tons to tide us over until the barge came in.

Q. And for that reason you were compelled to pay an additional charge for those particular purchases that you made?

A. Yes.

The Master. Now what is the point?

Mr. Neumann: The point, as I understood it, is that Flushing Bay was frozen over and that he did not use the proper judgment in getting a proper supply of coal in at the beginning of the winter.

The Master: Do not let us waste so much time on matters of judgment; I have still to find a man who will not go wrong on judgment, including myself.

The Witness: That was not judgment; we could not get the coal.

The Master: I know, but to spend hours attacking a matter of judgment of operating officials will get us nowhere.

Q. Mr. Spear, is it fair to say that in no case do you use your independent judgment as to whether you will pay any particular price for supplies, such as the piping and the like, until you first have taken it up with the purchasing agent of the Consolidated Gas Company?

A. I don't quite get that question, Mr. Neumann.

The Master: Read it.

997 Q. (Read by the stenographer.)

A. No, it is not.

Q. In what instances do you use your independent judgment?

The Master: Without previous conference with him.

Mr. Neumann: Yes.

A. Why, I would say most of the supplies that we buy.

Q. Mention the supplies that you buy.

- A. Ranges.
Q. Those are gas appliances?
A. Yes.
Q. What else?
A. Water heaters.
Q. That is a gas appliance?
A. Yes.
Q. What else?

By the Master:

Q. What Mr. Neumann had in mind was, for instance, the repair material that you need, brick, the lining, cement, pipes, fittings and all that other mass of stuff—do you confer with the purchasing agent always before you buy, or at any time?

A. On any large order I always talk with him and ask him what his prices are and how they run.

Q. On small orders?

A. And see whether he has got any particular contract. No, our cement we buy locally.

Q. Brick?

A. We buy that locally, except the checker brick, and that we usually buy in connection with the Consolidated Gas Company.

They figure up all their requirements and then get bids from
998 different concerns, and we save money that way.

Q. You get your checker-brick through the Consolidated, then?

A. We buy it direct, our order is placed direct, except that we get the prices through them.

Q. That is what I mean.

A. In other words he has a whole department there that are doing nothing but getting prices, and I avail myself of that to save money.

By Mr. Neumann:

Mr. Spear, coming back to coal, you had a contract for the delivery of your coal, running from April, 1919, to April, 1920; is that correct?

A. Well, I would not say positively. Mr. Addicks testified that; I do not know just what—

Q. Mr. Gawtry, and introduced in evidence here the contract.

A. Yes.

Q. You ran short of coal during that coal year, did you not, April, 1919, to 1920?

A. I would say that our stock diminished, yes.

Q. Did you not run short of coal and have to purchase it from other companies?

A. Yes.

Q. And that was along about March or April of this year, was it not?

A. I do not recall the date of it.

Q. And did you not introduce in evidence here the bills yourself?
A. I did.

Q. And don't you know that you testified to what the dates were?

A. Well, I do not recall it now. Whatever I testified at that time was correct.

999 Q. Yes, but did you not recall then what you were testifying to? It was only at the last hearing.

A. Well, I was probably testifying right from the bills.

Q. And you had no independent knowledge of it yourself?

A. Yes, because I knew that the coal came in at that time; but I would not say now whether it was in March or February, but about that period.

Q. It was the early part of this year, was it not?

A. Yes.

Q. And that is part of the calendar coal year?

A. Yes.

Q. During that year the daily work sheets or daily—

A. Daily works report?

Q. Daily works reports, indicate that you sold coal to your employees?

A. Yes.

Q. Is that true?

A. Yes. That is coal we cannot make gas out of, though.

Q. You have charged it up under Generator Coal, have you not?

A. Yes, because it is screenings from the screenings. It is the larger screenings. In other words, when we fill our buggies we use forks, and the work has a certain distance between the times. Any coal that will fall through those times does not go into the generators; that is what we call screenings. Now, we screen that on a screen of an inch mesh, and what does not go through we sell to the employees.

1000 Q. And that coal could not be used for any purpose in your works at all?

A. It is worth more to sell it that way than it is to use it in the boilers, besides helping out our employees at times when they could not get coal in Flushing.

Mr. Neumann: I move to strike that from the record as not responsive.

The Master: I will deny the motion.

Mr. Neumann: Exception.

Mr. Neumann: Have you the payrolls, Judge Ransom, that I asked you to produce—January, 1918, February, 1918, January, 1919, and February, 1919?

Mr. Ransom: I had no request until this morning. I telephoned for them. When you spoke about them a little while ago I telephoned.

Mr. Neumann: You had them here at the last hearing when this witness was under cross-examination, and we did not finish with them.

Mr. Ransom: The payrolls?

Mr. Neumann: Yes, the payrolls. The Master directed you to telephone for them.

Mr. Ransom: We had the works reports, but I did not—

Mr. Neumann: No, the payrolls; you sent up for them at the Master's direction.

Mr. Ransom: They will be here. They will be here,—again.

Mr. Neumann: Have you Exhibits 58 and 59?

The Master: Haven't you got copies of all the exhibits?

Mr. Ransom: Why, of course they have.

1001 Mr. Neumann: Yes, but I want to show the—

The Master: Well, use your copy.

Mr. Neumann: I should not like to.

The Master: And ask your question.

Q. You recall Exhibit 58, do you, Mr. Spear?

A. I do not know what it is—the number.

Q. (Counsel indicates exhibit.)

A. Yes.

Q. And you recall Exhibit 59, which was introduced at the same time Exhibit 58 was?

The Master: How is that entitled?

Mr. Neumann: Sir?

The Master: How is 59 entitled?

Mr. Neumann: I have not it here. If the Judge would produce his original, why, I will show it to the witness.

The Master: He gives you copies in order to facilitate your work.

Mr. Neumann: Yes, and we immediately give them to our department in order to facilitate the cross-examination.

The Master: All right, get them back.

Mr. Ransom: That is why we give you two copies, one for you and one for them.

Mr. Neumann: I may have it here. No, I have not.

Mr. Ransom: What one is it you want?

Mr. Neumann: Exhibit 59.

Mr. Ransom: The very purpose of giving you two copies is to enable you to give one to your department.

Mr. Neumann: It is very kind of you.

Q. Having looked at Exhibit No. 59, do you recall it?

A. I do.

1002 Q. Did you make up Exhibit 59 from Exhibit 58?

A. No, I did not.

Q. Where did you obtain the data upon which you based Exhibit 59?

A. From the vouchers.

Q. I do not want to mislead you, Mr. Spear, but look at sheet second of Exhibit 58.

A. That has nothing to do with this.

Q. No part of the information of Exhibit 58 has anything to do with Exhibit 59?

A. That is right.

Q. Is that correct?

A. That is correct.

Q. What did you use as the basis for Exhibit 58?

A. The payrolls.

Q. For those years?

A. That is right.

Q. What did you use as the basis for Exhibit 59?

A. The vouchers rendered by the coal and oil companies and the stevedores.

Q. Exhibit 58, sheet 2, was intended by you, was it not, to indicate the increase in wages, for the years therein set forth, in the various departments?

A. Yes.

Q. Take the sixth column under the subheading "Boiler Coal," do you see the figure there 1.1635?

A. I do.

Mr. Ransom: That is dollars.

Q. How did you arrive at that figure?

A. Dividing the amount shown in the fifth column by the number of tons shown in the second column.

1003 Q. Will you just do that on paper?

A. (Witness makes computation.) Yes.

Q. Is there an error in that figure?

A. In the fourth decimal place, yes.

The Master: What is the figure?

Mr. Neumann: It should be 1.1631.

The Witness: 1.1631.

Mr. Neumann: Instead of 1.1635.

The Witness: In the fourth decimal place.

Mr. Neumann: I am just trying to show that the exhibits are not correct, that there are errors in them.

The Master: Go on.

Mr. Neumann: It does not make any difference whether they are small or large, the witness has testified the exhibits were correct and he computed them, and I am showing that he has not properly computed them.

The Witness: That may be a typographical error.

Mr. Neumann: But it is an error, nevertheless, isn't it?

The Master: Go on.

Q. Using that same line, that same last line under "Boiler Coal," you have the increase under the column Year 1911, 138%, is that correct?

A. Right.

Q. How did you reach that figure?

A. By taking the difference between that 1911 cost and the 1920 cost, and dividing by the 1911 figure.

Q. Will you demonstrate that, please.

The Master: What is the difference there, Mr. Neumann?

Mr. Neumann: Seven per cent.

1004 Q. The Master: What is your answer, Mr. Spear?

A. (After computation.) 138%, the same as the sheet shows.

The Master: You do not find an error of 7%.

The Witness: I do not.

Q. Take Exhibit 58, Mr. Spear. Have you in any way computed the operating payroll per thousand cubic feet of gas from 1914 to 1919, for each year?

A. On this exhibit? No.

Q. Could you do that quite readily?

A. No.

Q. In your opinion would not the operating payroll per thousand cubic feet for the years 1914 to and including 1919 be a better and correct reflection of the increase than the method which you have adopted?

A. No, I do not think so. This exhibit was gotten up to show the rate, the increase in the rate of pay of the men.

Mr. Neumann: Are those payrolls here?

Mr. Vilas: They are on the way.

Q. Mr. Spear, is there any record of time kept so far as you, Mr. Raynor, or Mr. Woods are concerned?

A. No.

Q. By none of the three is there any record of the time kept?

A. No.

Q. Have you any other business interests?

A. I have not.

Q. In addition to the position you hold with this company?

A. No.

1005 Q. You spend all your time with this company?

A. I do.

Q. Beginning with August, 1919, there was part of your salary that was put in Suspense Account; is that correct?

A. August, 1919?

Q. Yes. Would you like to refer to the book to look it up? I can tell you the amount: \$187.50 was only charged, instead of \$250.

A. Oh, that was an adjustment for the time that I was in the Ordnance Department.

Q. That still remains in Suspense Account, does it?

A. I don't think so. I think that has been taken out by this time.

Q. Where did it go?

A. Into Salaries.

By the Master:

Q. Into what?

A. Into salaries, General Office Salaries.

Q. As a credit?

A. As a charge.

Q. No, this amount that went into Suspense, that you did not get—Oh, you got it all, did you?

A. Yes.

By Mr. Neumann:

Q. Why was it charged to Suspense Account, then, and not to your salary account?

A. To spread it over a period of more than a month.

Q. Those items occur each month from August, 1919, on?

A. Yes. While I was in the Ordnance Department the company paid me the difference between the salary the Government 1006 paid me and the salary I was receiving from them.

Q. Did you ever look at the items in your books with reference to these salaries—this salary that I am talking about?

A. I do not think I did, no.

Q. Would you not like to look at it?

The Master: What is the point?

Mr. Neumann: The point is we would like to know what became of those moneys; they are charged to Suspense Account and that is the end of them.

The Master: All right, have your men find out what became of them.

Mr. Neumann: Mr. Spear is the man who had charge of these books.

The Master: It is not important enough; I will not take any more time on it.

Q. You have charged up as an expense, operating expense of the year 1919, the sum of \$15,518.73, and the item is "Rate Case."

The Master: For what?

Mr. Neumann: Rate Case.

Q. (continued.) Does that mean this present case?

A. It does.

Q. What does that include?

A. It includes Bartlett-Hayward's examination and appraisal, and—

By the Master:

Q. Mr. Teele?

A. No, that is not in that.

Q. Will the vouchers show?

A. Yes, the vouchers will show; they will all show.

1007 Q. Mr. Neumann: We have not been able to find them.

The Witness: The largest part of it is Bartlett-Hayward.

The Master: We will not waste any more time on it.

By Mr. Neumann:

Q. Are there any legal expenses in that?

The Master. The vouchers will show, so the witness says. I will not take any more on it.

Mr. Neumann. Does your Honor rule that where we cannot find anything, and where we are endeavoring to point out to the Court a matter that ought to be cleared up, a witness who has charge of the books will not be permitted to clear it up?

The Master. I am making the ruling on the question that you asked. The witness says those are taken from the vouchers, and the vouchers must show it. If the vouchers do not show it, you bring in a witness to prove that fact, in contradiction of what this witness says.

Q. Mr. Spear, was the year 1919 one unusual with reference to repairs, so far as your company is concerned? In other words, did you do a lot of repairing in the year 1919?

A. We did considerable repairing in 1919.

Q. More so than in any previous year?

A. I wouldn't say that.

Q. Well, comparing it with 1918?

A. We may not have done so much in 1918 on account of war conditions, not being able to get materials, and had to make up for it in 1919.

1008 Q. How about 1917?

A. That same condition existed.

Q. How about 1916?

A. Well, I can't recall what work we did as far back as that.

Q. It is fair to say, is it not, that you left a number of repairs to accumulate and that you made them in 1919, which you contend is the first year you were able to make them in?

A. No, I say it might have been that way.

Q. Let me call your attention to some of the items here, perhaps this may refresh your recollection. In the year 1918, repairs of works and station structures, labor \$200.36; 1919, \$636.32. Do you recall any of those figures?

A. I don't recall the exact figures, no. You want to realize this condition, too, Mr. Neumann, that we paint our holders about every three years. In the meantime it might be necessary to paint part of it so that it might come heavier in one year than in another. You can't take repairs, you can't take an average in any one year.

Q. That is, repairs taken for one year would not be a criterion of the general average of repairs over a period of years?

A. Not necessarily.

Q. That is what I am trying to get at. Take for instance the item of repairs to gas apparatus, under materials, in the year 1918, there was, \$4,020.81 spent; and in the year 1919, \$12,891.89. How do you account for that?

A. Well, I can't recall the details because I haven't gone into it; some of that might be due to increase in cost of materials.

Q. But the increase in cost wouldn't be 300 per cent?

A. Oh, no.

Q. So that it can only be explained upon the ground that there were more repairs to gas apparatus in the year 1919 than in the previous years by about 300 per cent?

A. I would say that is part of the explanation; part of it is more repairs, and the other part would be increase in cost.

Q. Take repairs to gas apparatus and labor, the amount in 1918 is \$3,528.06; and in 1919, \$6,327.79.

A. That same condition would apply there, due to increase in labor as well as materials.

Q. And finally going to the totals of repairs of all kinds, in the year 1918 it was \$14,326.84; and in the year 1919, \$33,642.56. How do you account for that?

A. Only in two ways, that the work done in 1919 was more than in 1918, and also in the increase in cost of labor and materials.

Q. By reason of the fact that repairs were allowed to accumulate?

A. Well, I wouldn't say that.

The Master: Well, do you mean the repairs were allowed to accumulate or that they might not have been necessary?

Mr. Neumann: Either one.

The Witness: Yes, or it might not have been necessary to make repairs in 1918, but I would say that there was some accumulation here, in my recollection of it.

Q. Take this view of it, that the year 1919 was an unusual year with reference to repairs compared with other years, is that it?

A. I wouldn't say that.

Q. Well, compared with 1918, then?

A. Compared with 1918, yes.

Q. It was unusual?

A. Compared with 1918.

The Master: Well, as I understand your testimony, Mr. Spear, in analyzing these figures of the cost of operation in 1919, you say I have got to take into consideration the fact that the cost of this repair item is probably more than it will average during the years.

Mr. Ransom: I didn't understand him to say that.

The Master: I did.

Mr. Ransom: He said as compared with 1918.

The Master: 1919 it was thirty-three or thirty-four thousand dollars.

The Witness: Yes.

The Master: It was very high.

The Witness: Yes.

The Master: It would not be as high as that this year?

The Witness: I won't say this; it might be higher, I don't know.

The Master: Well, pretty nearly five-twelfths of the year has gone; has the proportion this year been as great, indicating that you would have to spend \$34,000 this year?

The Witness: I haven't made any comparison for the expenditures this year so far.

The Master: Have the repairs been substantial this year so far?

The Witness: Yes.

The Master: In what respect?

1011 The Witness: On the painting of the holders, painting of apparatus.

The Master: Didn't you paint them last year?

The Witness: No.

The Master: What was this repair work you did last year?

The Witness: I don't recall, but-----

Mr. Ransom: Let him finish his answer before the witness Neumann testifies in rebuttal.

Mr. Neumann: Imitation is the sincerest flattery.

The Witness: We overhauled our generator sets, put some new doors on the generators and made repairs to the linings of the generators, carburetters and superheaters; I think on one set we had to put in new linings; in relation to the linings you can't tell how long they are going to last; sometimes they might run a year, and I have seen them give out in three months.

The Master: Well, you didn't do any painting to any extent last year, did you?

The Witness: Not to any large extent.

The Master: You did the overhauling last year and you are doing the painting this year?

The Witness: And we are doing some more overhauling this year, too.

The Master: Let us assume that between the additional overhauling and the painting you will run as high this year as last year; would you say that you will probably run high next year?

1012 The Witness: Repair is an awfully hard item to estimate ahead on; things will happen that you don't foresee.

Now, for example, in running a generator, everything may be going along in fine shape today and a section of the lining will come out just above the doors, and the heat go right out of the lining, without insulation, and you may have to put a big sheet in the generator, besides new doors--that might not happen for a year.

The Master: Well, this is what I am trying to get clear in my own mind. Mr. Neumann has pointed out that the difference between 1918 and 1919 is very wide, some 300 per cent more expense in 1919 than in 1918, and indicates by his questions that the same situation obtains as to prior years.

What I am trying to get clear in my mind is whether there was not some unusual work done last year and perhaps this year because of an accumulation of work that was put off from time to time because of war conditions.

Mr. Neumann: That is what the witness stated, if the Court please.

The Master: Yes, to some extent he said that.

The Witness: I think there was to some extent.

The Master: Now you are catching up with that, aren't you?

The Witness: Yes.

The Master: Won't you get back to the situation more nearly analogous to the years prior to 1918?

1013 Mr. Ransom: But the cost of labor and material would be very much higher.

Mr. Neumann: We understand that.

The Master: But I mean to the extent of the work, not to the cost of it.

The Witness: Here is another condition that would come in there: The nearer you get the capacity of your machines the more repairs you would have on your machines.

The Master: Is it your testimony that for the year 1921, we will say, skipping 1920, you are going to get nearer to the extent of the work of 1918 or nearer to the extent of the work you did in 1919 and 1920?

The Witness: I would say that 1921 it would be more nearly the 1919 figure than the 1918.

The Master: Not figure, extent.

The Witness: Extent, yes.

The Master: You believe that the amount of work that you will have to do in 1921 will more nearly approximate the amount of work you did in 1919 than in 1918, 1917 and 1916?

The Witness: Yes, I would say so.

Mr. Neumann: May I call the Court's attention to Mr. Miller's testimony: According to Mr. Miller's testimony as of January 1, 1920, the only deferred maintenance on this plant amounted to about \$6,000, which is very small.

The Master: Go ahead now.

Mr. Neumann: Now the main item that I wanted your Honor to question him about was the repairs to gas apparatus; the 1014 material in 1918 was \$4,000, and in 1919, \$12,000.

The Master: Suppose you ask him yourself.

Mr. Neumann: That is what I thought your Honor would touch upon; that shows, I think, of itself, that it is unusual.

The Master: Well, go ahead.

By Mr. Neumann:

Q. Now, Mr. Spear, you testified that Exhibit 59 was prepared from the vouchers and that the vouchers from 1911 to 1919 were available?

A. That is right.

Q. And that you did not include the years 1912 and 1913, is that right?

A. Yes, that is right.

Q. And that the reason you did not include the years 1912 and 1913 is that it would make it too many?

A. Yes.

Q. Were the years 1912 and 1913 exceptional with reference to the amount of vouchers?

A. No, I meant getting it on the sheet, typewriting.

Q. And the only reason you didn't put them in the sheet was you didn't have room enough on the one sheet?

MR. RANSOM: May I just bring out one thing in order to clear the record. It is very obvious that Mr. Neumann, in putting before your Honor the \$12,000 figure, left out many, many thousands of repair items for the year 1919.

MR. NEUMANN: You can show that on redirect, if I am in error. According to my computations here, those are the figures.

1915 The Master: Go ahead, Mr. Neumann.

MR. NEUMANN: There is an unanswered question.

The Master: What is it?

Q. (Read by the stenographer.)

A. And I didn't think it was necessary to get so many years in there. I might say here that the reason we started—

Q. One moment, Mr. Spear. Why didn't you then omit the year 1911 and start with the year 1914?

A. Because 1911 was the first year that we went to a dollar.

Q. And isn't it a fact that 1912 and 1913 were years that the prices were quite low and that therefore your exhibit would have shown a lower ratio percentage, and that is why you didn't include them?

A. Absolutely not.

Q. That is not true?

A. It is not.

Q. And the only reason you left them out is the reason you have given?

A. It is.

Q. Do you know whether the years 1912 and 1913 were years low in price?

A. I do not.

Q. You don't know anything about it?

A. No, I haven't looked it up.

Q. You testified as to these years, that you were familiar with the prices that the exhibits cover?

A. I was.

Q. Then you did not take into consideration the years 1912 and 1913 at all?

1916 A. I did not, didn't look into it. Prior to 1911 we had a sliding scale rate and it went down to five cents a thousand per year.

Q. You started with the first year and you left out the next two succeeding years and then jumped to 1914?

The Master: We have got that, Mr. Neumann.

MR. NEUMANN: Well, the witness keeps talking.

The Master: We have got that.

Q. Now, Mr. Spear, are you familiar with the number of men that are employed in the works for the various years?

A. Well, I can't recall them from memory but I have been familiar with those conditions right along.

Q. Well you have tables based on that, have you not?

A. Yes.

Q. Was that based on your own knowledge or what was it based on?

A. Taken from payrolls.

Q. Taken from payrolls?

A. Yes.

Q. And when you took that, you had to inform yourself as to the various men that were employed?

A. Yes, I took it right from the payrolls.

Q. Generally speaking, was there any difference in the number of men employed, for instance in boiler labor, in the year 1918, as against the year 1917?

A. I don't recall now.

Q. Well, would you say there was or was not?

1017 A. I wouldn't want to say about any specific period.

Q. Do you know whether you took on any additional men in 1919 over and above what you had in 1918?

A. I would say we probably had more men in 1919 than in 1918.

Q. Do you know how many?

A. No.

Q. Take generator labor in comparison with 1918 and 1919, do you know what the conditions were?

A. No, I can't recall.

Q. Purifier labor, do you know what the conditions were?

A. I don't recall.

Q. Would the Public Service Commission reports for those years indicate to you the number of men that were employed in those various sub-divisions that I have given you?

A. I don't recall just how they are divided in the Public Service Commission's reports.

Q. Did you ever look them over?

A. How is that?

Q. I say, would you want to look those reports over?

The Master: Is there anything in the report that you want to direct his attention to?

Mr. Neumann: There are some things — want to direct his attention to and I would like to have him advise himself as to the reports.

The Master: If there is anything in the reports that bears on the inquiry, show him the reports; it is not a question as to whether he wants to look at them.

1018 Mr. Ransom: We would be glad to have the reports in evidence.

Mr. Neumann: I have heard that before, Judge. Why didn't you put it in, you were on the main case?

Mr. Ransom: I tried, in every case that I have been in.

Mr. Neumann: What I am trying to indicate to the Master is this, that there is a considerable increase in each of those items over the year 1918.

The Master: In amount or in number of men?

Mr. Neumann: In amount.

The Master: That has been proved.

Mr. Neumann: One moment—which is not in accord with the schedule that this witness has put in.

The Master: Call his attention to it, direct his attention to it.

Q. Take for instance the item of boiler labor in the year 1918; your books indicate that you spent \$4,597.53 for that kind of labor; and in the year 1919, \$7,089.28. How do you explain that, Mr. Spear?

Mr. Ransom: I object to the form of the question as incompetent, not the proper way of proving the contents of the book, and a mere assertion on the part of counsel.

Mr. Neumann: Do you want your witness to look at the items in the books? The books are right here in court.

The Master: I assume that the witness would say, I don't remember what the 1918 figures were; it is simply a waste of time.

1619 Q. Mr. Ransom: The 1918 books are not in evidence.

Mr. Neumann: Does your Honor rule that the objection is well founded?

The Master: I sustain the objection.

Mr. Neumann: In order to make the record, I will just ask one more question along the same line.

The Master: What is the use of trying to make a record of that kind. You say that the expense for 1918 for that same item was a certain sum of money.

Mr. Neumann: That is right.

The Master: You have called for the payrolls, haven't you?

Mr. Neumann: I have called for the payrolls; yes—some of them.

The Master: Are they here yet?

Mr. Vilas: They will be here in a moment.

Mr. Ransom: They went to my office by mistake instead of here.

The Master: I will let you prove by the payrolls that the amount expended for that labor in 1918 was so much money; then I will let you ask him to explain. I don't want you to be misled by my ruling; I am simply ruling as I have now because there is no basis for the question.

Mr. Neumann: Then will all the payrolls be here for 1918 and 1919?

The Master: All that you asked for.

Mr. Neumann: I have asked for four particular months.

The Master: That is probably all you will get.

1620 Q. Mr. Neumann: I want to indicate to the Master that in those particular months there are very substantial errors.

Mr. Ransom: The statement Exhibit 58 is a comparison of given months. I have sent for all of the 1918 and all of the 1919 payrolls, and 1920, and they went to my office.

Mr. Neumann: Then I will go to another subject. In the year 1918, Mr. Spear, your books show a credit for residuals sold, \$2,968.76.

The Master: 1918?

Mr. Neumann: Yes.

Mr. Ransom: I object to the question.

Mr. Neumann: I am not through yet, please.

Q. And in the year 1919 only \$13.95.

Mr. Ransom: Objected to.

The Master: Let me interrupt you. Do you remember what the residual credits sold was for 1918?

The Witness: I don't remember the exact amount but I know what it was.

The Master: Well, then, answer the question.

The Witness: We sold a lot of tar and drip oil to the Barrett Company for the extraction of toluol and benzol for the manufacture of high explosives.

Q. That was in the year 1918?

A. 1918—there was no demand for it in 1919.

Q. Well, you obtained substantially the same amount in comparison with the amount that you manufactured for the year 1918, did you not?

A. Yes, but that—

1921 Q. Yes or no to that.

A. Yes.

The Master: You mean the quantity of residuals produced was comparatively the same?

Mr. Neumann: Yes, comparatively the same.

Q. Now, what has become of the residuals in the year 1919?

The Master: He has already told us I think; go on, answer again.

A. In the holders.

Q. You still have them?

A. Yes.

The Master: Well, didn't you use some of it under the boilers?

The Witness: That is tar, yes.

The Master: Well, that is a residual.

The Witness: And tar condensation in the boiler is worth more than tar.

The Master: But Mr. Neumann's inquiry covered tar as well as the drip oil.

The Witness: Well, we sold some of it, a very small quantity of it. The major quantity sold was the accumulation of a number of years in our storage holders from condensation.

The Master: The fact is you sold very little in 1919; you sold a couple of thousand dollars' worth in 1918.

The Witness: Yes, and that was due to an accumulation of several years.

Mr. Ransom: Due to the war and the demand for it.

Mr. Neumann: I move to strike out the testimony of the witness Ransom.

1022 The Master: Next question.

Q. Exhibit No. 65, Mr. Spear, contains an item on schedule 3 showing that it is taken from operating ledger No. 2 for the year 1919, page 208, general miscellaneous expense, defensive emergency, \$747.46: What was that defensive emergency?

A. That was a contract with the National District Telegraph Company for signal boxes which go to their headquarters, and extra lights which we had installed on the north end of our plant around the oil tanks, and additional watchmen.

The Master: To protect the plant because of the war condition?

The Witness: Yes.

Q. That was charged as an operating expense for the year 1919?

A. Yes.

Q. Are you familiar with that resolution of the Board of Directors of October 17, 1916?

A. I presume so.

Q. With regard to contingencies?

A. Yes.

Q. You remember it, do you, without showing it to you?

A. No, I don't recall it exactly.

Q. The Public Service Commission reports for the year December 31, 1916, page 36, the typewritten sheet (showing witness paper)?

A. That is right.

Q. You recall it now?

A. Yes.

Q. Why was not this item charged in accordance with that resolution of the Board of Directors to that account?

1023 Mr. Ransom: Objected to on the ground that the question presupposes that it should have been charged to that account.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Because this was not due to damages.

The Master: And it was to prevent damage, was it?

The Master: The resolution speaks about—

The Master: Well, this item was to prevent damage?

The Witness: Yes.

Mr. Neumann: I offer in evidence that resolution, which is contained on page 36 of the Public Service Commission reports by the New York & Queens Gas Company for the year December 31, 1916.

Mr. Ransom: What is the date of the resolution?

Mr. Neumann: October 17, 1916.

Mr. Ransom: I have a copy of it, and I am willing to have it spread on the record.

The Master: Give it to the stenographer and he will spread it on the record.

(The resolution referred to is as follows:

"On motion, duly seconded, it was

"Resolved: That the resolution adopted by this Board at a meeting held November 16th, 1915, be amended by striking out the words "Operating Expenses" and inserting in lieu thereof the words "Net Earnings," so that the resolution, as thus amended, will read as follows:

1024 "Resolved: That the title of the account heretofore designated as Renewal and Contingency, be from and after December 31, 1914, designated as Contingency and that, for each month thereafter, there shall be credited thereto and charged to Net Earnings an amount equal to five cents (5¢) per thousand cubic feet of gas sold during said month, for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrections or riot or any other hazards, no charges against the said Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

Q. Now, having heard the resolution, or having seen the resolution, Mr. Spear, what is your answer as to why the particular amount in question was not charged to Contingencies instead of Operating Expenses for that year?

The Master: Question not allowed. The witness already answered it.

Mr. Ransom: I don't just see why this witness should be interrogated, in view of the language of that resolution.

Mr. Neumann: Exception.

Mr. Ransom: There was no resolution of the Board of Directors, in fact there was an affirmative resolution of the Board of Directors that there should not be any such charge during either 1918 or 1919.

Mr. Neumann: I have shown a certain condition to exist, it is up to you to show the contrary.

Mr. Ransom: Well, you know the contrary, why don't you—

1025 Mr. Neumann (interrupting): I do not; if I did I would prove it.

Mr. Ransom: You have the 1918 and 1919 reports there.

Q. I now show you Complainant's Exhibit Nos. 60 and 61. You testified, did you not, that you made these exhibits up?

A. I did.

Q. And what did you make them up from?

A. Original vouchers.

Q. Exhibit 61 is made up from Exhibit 60?

A. Yes.

Q. And you intended to show by these exhibits the prices of the

various materials from the years 1914 to 1919 and the ratio or percentage of increase?

A. Between 1914 and 1919, yes.

Q. Well, that is what I am asking.

A. Yes.

Q. Now, then, have you in Exhibit 60 set forth all of the materials that are used in a gas-making plant?

A. Oh, no.

Q. You have picked out certain ones?

A. Yes, picked those that we could get a direct comparison of.

Q. Why did you pick them out?

A. Because we could get a direct comparison on those items.

Q. Which ones did you leave out?

A. In the first place, the coal and oil is left out because it is on another exhibit.

Q. Yes. Outside of coal and oil, what other are the materials that you use around a gas-manufacturing plant, that you have omitted from that exhibit?

1026 A. Other sizes—Oh, the gas plant?

Q. Yes.

A. Other sizes of packing.

Q. What else.

The Master: Have you got a memorandum, Mr. Neumann, of some of the things he has omitted?

Mr. Neumann: Well, I will try to find it in a minute.

The Master: I think it will be very much better if you will say, "You have omitted the following items, haven't you?"

Mr. Neumann: Yes, your Honor sees the point I am driving at.

The Master: Yes. You must have or I assume you must have a list of the items he has omitted, and I think you might say, "Now, Mr. Witness, you did not include the following items," and if you want to show those items have gone down instead of going up, it is perfectly simple to get at it.

Q. Well, take for instance the item of lead; have you shown that?

A. No.

Q. Have you shown yarn?

A. No.

Q. Have you shown lumber?

A. No.

Q. Have you shown brick?

A. No.

Q. Have you shown generating apparatus?

A. No.

Q. Of any kind?

A. No.

Mr. Ransom: I object to the question. These things, generating apparatus is not anything that is—you do not buy a carload 1027 of generating apparatus and charge it—or a bushel or a barrel, and charge it to operating expenses.

The Master: Overruled. Go ahead, Mr. Neumann.

Q. You have shown brooms on that schedule, haven't you.

A. Yes. The reason—

Q. (Interrupting.) Now, lead and yarn are used to a considerable extent in a gas plant, are they not?

A. No.

Q. How about laying mains?

A. They are in mains.

Q. Well, didn't you show in the year 1919 that there was a considerable amount of mains laid?

A. Yes.

Q. And you must have used a lot of lead and yarn during the year 1919?

Mr. Ransom: Objected to, no relation to operating results, the laying of mains is—

The Master (interrupting): A capital expenditure, isn't it?

Mr. Neuman: The witness has attempted to give us a sort of a composite picture here of prices and comparisons. My contention is that he has taken the non-essentials and has left out the essentials, and I am trying to show it.

Mr. Ransom: Mains are laid by contract, and are part of capital account, nothing to do with operations.

The Witness: We used so little, that we did not put in lead, and that is the reason I left lead out; and brick, I tried to get a comparison on brick and could not, because for a number of 1028 years we did not buy brick; and on lumber I could not find any two sizes that there would be comparison on.

Mr. Ransom: Well, is not both white and red lead there? What kind of lead do you mean by your question?

Mr. Neumann: Mr. Spear, isn't lead both red and white used in all of the joints around a gas plant?

Mr. Ransom: Objected to on the ground it is immaterial, because both red and white lead are shown in the exhibit.

Mr. Neumann: Well, then, he can say so, if that is so.

Mr. Ransom: Well, even you should know it.

The Master: Go on. Answer the question. You use red and white lead, don't you?

The Witness: Yes.

Q. Have you shown that on the exhibit?

A. I did.

The Master: The exhibit speaks for itself. I will read it: "Red lead, Atlantic; white lead Atlantic," 4th and 5th items on Exhibit 60.

Q. Well, that white lead and red lead that is referred to on that exhibit is lead paint like, isn't it, not caulking, used for joints?

A. That is right.

Q. Well, you have not shown the white and red lead that is used for caulking joints, that is what I mean?

A. No.

1029 The Master: The witness says he has not; he says they buy so little of it that he could not make any comparison.

Mr. Ransom: Main work is done by contract.

Q. Now, let me get this clear, Mr. Spear. I do not want to mislead you. There is certain lead that is used for caulking joints, isn't there?

A. That is right.

Q. Now, that is different and distinct from white and red lead?

A. That is right.

Q. Now, you have not shown that item on this exhibit.

A. No.

Q. And you have not also shown lumber?

A. No.

Q. Nor brick?

A. No.

Q. And what was your reason for not taking those in?

The Master: He has already given them. Now, I do not want you to go over it again. He said he bought so little lead he said he could not make a comparison, and could not get a comparison of sizes in lumber and could not make a comparison with brick, he had bought so little of it and did not have any.

Q. So that you do not pretend by this exhibit to indicate that these are all the raw materials that are used in a gas plant that you have included in your exhibit?

A. No, only that we could get a comparison on.

Q. That exhibit in that respect is not intended to be complete?

A. No.

1030 Q. Was that list intended to be the prices that you paid?

A. Yes.

Q. Well, now, you get your percentages in Exhibit 61 from the figures in Exhibit 60, is that correct?

A. Right.

Q. Now, wouldn't that largely depend upon the amount that was purchased in each year at the various prices? Take a concrete example, we will take the first item there, Iron Oxide Sponge, if you purchased 10 barrels in 1914 at .135, and 100 barrels in 1919 at .27, wouldn't you get a different average than you have for that on Exhibit 61?

A. We never buy sponge in such small quantities.

Q. Well, I used that as a comparative figure, and illustrative figure.

A. No, because oxide we always buy in either carloads—

Q. (Interrupting.) Well, I will take some other subject that will illustrate the point I want to make. You have not taken into consideration in arriving at these percentages whether you purchased one amount in one year and another amount in another, but you have taken it upon the same amount purchased in each year, is that correct?

A. Taken it on the amount purchased in that year, yes; taken the high and low point that we paid for it.

Q. Irrespective of the quantity?

A. If this is what you mean—

1031 Q. (Interrupting.) Do you know what a weighted average is?

A. A weighted average?

Q. Yes.

A. No.

Q. You take merchandise that you have purchased over a number of years, in order to get a weighted average you must know how much you purchased in each year, that is correct, isn't it?

A. Yes.

Q. Do you recall now what a weighted average is?

A. Well, I have never used it.

Q. You did not use it in this exhibit?

A. Oh, no; we took the high and low price that we paid for these materials in those respective years.

Q. And that is true of every item, is it?

A. Yes.

Q. And you have arrived at these figures of percentage here not according to what is called weighted average, but a straight average?

A. A straight average, yes.

Q. Irrespective of the quantity?

A. Yes.

Mr. Neumann: Are the payrolls here now?

Mr. Ransom: Yes.

The Master: Hand them over to Mr. Neumann.

Q. Now, Exhibit 58, you say was made up from the payrolls of your company?

A. That is right.

Q. Now, then, calling your attention to Exhibit 58 under the classification Laborers, which is the 9th item down, your exhibit indicates that you had in your employ on January 1, 1916, 6 men at 36 1/9 cents per hour?

A. Yes.

Q. Will you please refer to the January Payroll and indicate whether those men were employed during that month as laborers.

A. Yes, they were.

Q. That is 38 (indicating on payroll)?

A. That indicates the change. That was changed later.

Q. Now take this man here, A. Paga, when was he employed in that month?

A. He started on the 22d of January.

Q. He was not employed on January 1st, then, was he?

A. No.

Q. Nor the second week in January?

The Master: He was on the 31st of January?

The Witness: Yes.

The Master: So that that statement would be more nearly accurate as of January 31st than as of January 1st?

Mr. Neumann. Well, it is a comparison of months, as I understand.

The Master. Well, I will take them all as comparisons of months.

Mr. Ransom. It shows the rate and number of men.

The Master. These figures are based on the January Payroll, are they?

The Witness. Yes. That would increase the rate there (indicating) too.

Q. Well, what I mean is this. Mr. Spear, taking your payroll as you now have it before you, one of those six men was not employed during the month of January until the 21st or 22d of that month?

A. That is right.

Mr. Ransom. And then was employed at that rate of pay.

Q. Now, take the next item immediately underneath that. Laborers 3 at 33 1 3 cents per hour.

A. Yes, 3.

Q. When was Martens engaged?

A. On the 12th of January.

Q. So that for the first two weeks he was not there?

A. Well, say the first week and five days.

Q. All right.

A. Yes.

Q. Now, then, take the next item on Exhibit 58, 3 laborers at 38 8 9 cents per hour?

A. Yes.

The Master. Can't we save a little time? You have got certain points that appear from this payroll sheet, haven't you?

Mr. Neumann. Yes.

The Master. Now, why don't you say, Just look at that payroll sheet and tell me if this is not the fact? Then you will get it.

Mr. Neumann. The paper that was given me to explain these discrepancies I have lost. I know that there are certain discrepancies, but I cannot point them out, because, frankly, I lost the paper.

Mr. Ransom. There is no discrepancy at all.

Mr. Neumann. We think there is, because it indicates quite clearly the comparisons are not fairly made up and not proper.

1034 The Master. All right, go ahead; 38 8 9 cents.

Q. 38 8 9 cents, 3 men. How many do you find on the payroll, laborers only?

A. Three.

Q. That last one is 38 1 92.

A. 38 8 9.

Q. Was that man, Italian No. 63, employed during the whole month?

A. No he started in on the 8th of January.

Q. Was not employed for the first week?

A. No.

Q. Now, laborers at 44 4 9 cents?

A. One.

Q. When did he commence work?

A. On the 8th.

The Master: How many have you got at 41 6/9 cents now?

The Witness: One laborer.

The Master: When did he start?

The Witness: Same day, the 8th.

Q. Now, coming down to foreman under that first subdivision Exhibit 58, one foreman at 50 cents, right underneath the word inter?

The Master: The fourth item from the bottom?

A. Yes.

Mr. Neumann: The fifth item from the bottom?

The Master: I figure the fourth item.

Q. When did he commence?

A. On the 8th.

Q. Now, getting down to mains and services department, which the last subdivision on Exhibit 58, one foreman at 66 5/9 cents, when did he commence?

Q. A. In this mains and service, they are taken from the original vouchers of Sullivan Brothers.

Q. You mean you do not carry those on your pay roll?

A. No.

Q. I call your attention to Exhibit 58, heading "Wages paid by the New York & Queens Gas Company in 1911 to 1920, compiled on the pay rolls of the company gas works," is that correct?

A. It is.

Q. Well, then, this item you did not take from the pay rolls?

Mr. Ransom: That was all explained when the exhibit was put in.

A. Not the mains and service department.

Mr. Neumann: I ask that Mr. Ransom's statement be stricken out; it is incorrect.

Mr. Ransom: That is true; it was.

Mr. Neumann: We ought to have a clear record in this case, and we will get it if you will only not inject these extraneous matters. You are testifying yourself.

The Master: Go ahead.

Q. Now, getting down to the last item under mains and service department, one laborer 36 1/9 cents; do you find that on your pay roll?

A. No. All those items, those six items, are taken from the bills.

Q. Not from the pay rolls?

A. They are not, no.

Mr. Neumann: Will your Honor just give me a moment's time? I have given the wrong citation here and I want to call the witness' attention to it.

The Master: Yes.

1036 Q. I now show you Public Service Commission reports of the New York & Queens Gas Company for the year ending December, 1914, and direct your particular attention to page 69 thereof.

Mr. Ransom: What year?

Mr. Neumann: December, 1914.

Mr. Ransom: What is the question?

Q. Does the figure there given as the total indicate the total wages paid to employees during the year 1919, of all kinds?

A. I would say yes.

Q. And that figure is what?

A. \$57,930.17.

Q. I now show you Public Service Commission reports of the New York & Queens Gas Company for the year ending December 31st, 1919, and I direct your attention to page 70. Likewise, does the total there give the total amount paid for that year?

A. I presume so.

Q. Well, do you know whether your reports are correct or not?

A. Whose report is this?

Q. It is the New York & Queens Gas Company's, isn't it?

A. Yes, but these figures here in lead pencil, I was wondering at that. What you are speaking of, these employees and wages, are in lead pencil.

Q. Yes. That is the way you submitted it, was it not?

A. To the Public Service Commission?

Q. Yes.

A. No.

Q. This is taken from our files; I just went over and obtained it.

1037 Mr. Ransom: There are the initials of the member of your staff to the lead pencil notations.

Q. What does it say there in lead pencil?

Mr. Ransom: Objected to as immaterial.

Mr. Neumann: You brought it out in the record now I will show what it says there.

Mr. Ransom: They cannot put in stuff in lead pencil and then try to swear it onto us in court—not even the Public Service Commission.

Mr. Neumann: I do not think we have fallen into your class yet. Judge Ransom.

The Master: What does the inquiry relate to?

Mr. Neumann: Whether that indicates the total amount paid.

The Master: For employees?

Mr. Neumann: Yes.

The Master: What was it for the year before?

The Witness: This is 1914 (indicating), \$57,930.17. There is a difference there.

The Master: I am not going to allow that question in that form.

By the Master:

Q. Mr. Spear, would you say that this report as produced here would indicate that the lines 21 to 44 on page 70 were not filled in, under "Gas"? I mean on the side of "Gas", when you filled it in.

A. Yes, it looks that way.

Q. Do you remember being telephoned to by anybody for the figures?

A. I do not recall it.

Q. Do you recognize the handwriting of those figures?

1038 A. No, I do not.

Q. Are they yours?

A. They are not. They might have gotten those figures from Mr. Raynor's department. I do not recall any telephone conversation with me.

By Mr. Neumann:

Q. Who makes up these reports?

A. Mr. Raynor does most of the detail work, and some of the detail work I do.

Q. Do you know whether in the year 1919 you or Mr. Raynor made up the reports?

A. Mr. Raynor made up the reports in 1919. Oh, that is for the year 1919.

Q. For the year 1919.

A. We both made parts of it.

Q. Do you recall whether you signed it or not?

A. I did.

Q. You signed it as correct?

A. To the best of my knowledge and belief, as it says there.

Q. Do you want the Court to understand that you did not fill in that particular page, page 70, with any figures?

A. It looks as if it had been missed.

Q. It looks as if it had been missed?

A. Yes.

Q. Do you recall any conversation with anybody with reference to that page?

A. No, I do not.

Q. The books would indicate whether the figure there given as the total was correct or not, would they not?

A. Yes.

Q. And if the book figures of the total annual pay roll agreed with that, that figure would be correct?

1039 A. It would.

Q. Where is the total annual payroll in your books?

A. In the ledger.

Q. Can you turn to it? The ledger is in court.

A. (Examining book.) \$35,261.72.

The Master: What is the figure that you have got there?

Mr. Neumann: \$84,208.95.

The Witness: \$85,212.34, I make that in 1919.

The Master: What are the various subdivisions? Are they not subdivided here? You have accounts payable in there.

The Witness: This total here is for the year 1919 (indicating).

The Master: That includes the accounts payable?

The Witness: Yes. There is a difference of about a thousand dollars.

The Master: You have got it subdivided over there; does not this book show the same subdivisions, somewhat? Does not your ledger show what the total production expense was—labor?

The Witness: Yes.

The Master: Suppose you just check it that way and see where the variance is—production expense labor. Look at general and miscellaneous expense, \$1,259.

Mr. Neumann: That would be about the difference.

The Master: Then there is fixed capital \$6,435 and other accounts specified suspense. Are you assuming this to be the correct figure for your question?

1040 Mr. Neumann: Yes, it is the correct figure.

The Master: Ask your next question; it is not so important.

The Witness: Perhaps he is correct, and they got it over the telephone from me afterward.

The Master: Upon analysis it would probably be found to be correct. Let us get to the point now. It was \$84,000 in 1919?

Mr. Neumann: \$84,208.95.

The Master: As against \$57,930.17 for 1914.

Mr. Neumann: Yes.

The Master: Now what is the question?

Q. The next question is, taking the year 1914, the report for 1914, can you from there state what the portion of the payroll is that is charged to gas operation only?

A. \$54,456.37.

Q. And in the year 1919 that amount was what?

The Master: According to these lead pencil figures it was seventy-seven.

Mr. Neumann: \$419.27. Now, if there is any question about these figures I would like to have him straighten them up first.

The Master: Let us assume they are correct, what is your point?

Q. In the year 1914, can you tell how many cubic feet of gas were sold?

Mr. Ransom: Objected to as immaterial and not within the issues in this case.

The Master: I will allow it.

Mr. Ransom: Exception.

The Master: He wants to show how much it cost per thousand cubic foot, I suppose.

Mr. Neumann: That is exactly it, and we will show what this difference is.

1041 A. 240,583,400.

Q. No, 239.

A. Oh, yes; 239,178,800.

Q. Take it for the year 1919, what is that figure, 336,246,400?

The Master: Let us have the figure; you have it there.

A. 336,241,400. You said 246.

Q. 336,241,400. Can you figure from that what the operating payroll would be in the year 1914?

The Master: Per thousand cubic feet.

Mr. Wheat: Per thousand cubic feet, and in the year 1919.

The Master: Of course he can, and you can figure it.

Mr. Neumann: 22.77 in 1914 and 23.02 in 1919. That is the point I was trying to demonstrate.

The Master: You have your facts on the record, and if there is any error in that computation, Judge Ransom, call my attention to it; otherwise I will assume that it is a correct computation.

Mr. Ransom: For anything that it may be worth.

Mr. Neumann: It may be very valuable before we get through with it.

Recess.

1042

Afternoon Session.

MAYNARD H. SPEAR resumed the stand:

Cross-examination.

By Mr. Neumann:

Q. Now, Mr. Spear, just before we adjourned for recess I had directed your attention to the amounts reported in the Public Service Commission reports of the New York & Queens Gas Company for the years 1914 and 1919, and you identified certain figures therefrom, from which I stated the ratio or percentage of increase in labor from the period 1914 and 1919; do you recall that?

A. Yes.

Q. Bringing you back to your Exhibit 58, from where did you compile the figures in that exhibit?

Mr. Ransom: Objected to, several times covered.

The Master: I think so, but I will allow it once more.

Mr. Ransom: Exception.

The Witness: No. 58 you are asking about?

Q. Yes.

A. Gas works and shop department are taken from the payrolls of the company; mains and service department taken from the vouchers.

Q. Then it is not correct to say that Exhibit 58 is taken from the payrolls?

Mr. Ransom: Objected to as fully covered.

The Master: He has already said that, but I will let him say it once more.

Mr. Neumann: All right, if it is covered I won't press it.

Q. Now, then, Sheet No. 2 of Exhibit 58 is intended to indicate the percentage of increase from the years 1911 to 1920, is that correct?

1043 A. Yes, there is a comparison there.

Q. What factors did you take into consideration in making up Exhibit 58, either Sheet 1 or Sheet 2?

The Master: What do you mean by factors?

Q. Outside of the payroll, or, as you say, the fact that certain men are not on the payroll but are on the contractor's payroll, did you take any other factor into consideration?

A. Well, Sheet 2 is a recapitulation of Sheet 1.

Q. Yes.

The Master: Referring to both sheets, did you take anything else into consideration except your own payroll and Sullivan Brothers, or whatever it was.

The Witness: No.

Mr. Neumann: Now, if the Court please, I do want to go a little further with the witness, but I haven't my books here now. I think Mr. Tobin is ready and prepared to go on for some length of time.

The Master: All right, go ahead.

Mr. Ransom: I thought Mr. Tobin was through?

The Master: Well, if he is not I will let him get through. Go on, Mr. Tobin. Have you anything else to ask, Mr. Tobin?

Mr. Tobin: Yes, sir.

Cross-examination.

By Mr. Tobin:

Mr. Ransom: Mr. Tobin took up a great deal of time.

The Master: Well, we will let him take up some more time.

1044 Mr. Neumann: You introduced a new exhibit today and I haven't had a chance to analyze or go through it.

Mr. Ransom: On the matters I asked him about today, of course, anybody should have the privilege of cross-examination.

Q. You have seen Exhibit 90 when that was introduced in evidence this morning, Mr. Spear; that is the present cost of distribution, taxes, and renewals and replacements?

A. Yes.

Q. Taking the items of stable expense and automobile repairs, can you tell us whether you have displaced any of the stable equipment, that is, horses or things of that sort, for automobiles in the year 1920?

A. No, we have not.

Q. In other words, your equipment as to stable expense and auto-

mobile repairs is the same in 1920, as of the date that this table was made up, as it was the date in 1919 with which you make your comparison?

A. We have within the last two weeks added one truck, which of course would not figure in here as an expense.

Q. That is a new motor truck?

A. Yes.

Q. Is that included in this table?

A. No.

Q. In any way?

A. No.

Mr. Ransom: The cost of the truck or the expense of its operation?

Mr. Tobin: My particular question was whether they had changed at all their equipment, that is what I was anxious about.

1045 The Witness: No. We had one horse in 1919 and still one horse.

The Master: Sort of a one-horse concern.

The Witness: Pretty near it.

Q. This amount of \$25,000 that you have here, gas rate appeal; has any part of that money been paid?

Mr. Ransom: I have no objection to going into that if the Master wants to take it as a basis, but in view of the fact that your Honor has indicated that you would not take it as a basis, I object to it.

The Master: I will let him answer the question.

The Witness: I think it is approximately \$2,000 that has been paid in.

Q. And down further in the same exhibit you have taxes paid and interest thereon; can you tell us what interest there was accrued, was it interest on old taxes, or interest on——

Mr. Ransom: Those taxes are the same as in 1919; they are down on Exhibit 65, the details.

Mr. Tobin: I am talking about this particular case.

The Witness: Yes, the amount is just the same as 1919.

Mr. Ransom: He has taken identically the 1919 figures.

Mr. Tobin: I didn't hear his answer.

Q. You were manager of the company on January 1, 1908, sir?

A. 1908, yes.

Q. There was introduced in evidence at the beginning of this trial the various franchises owned by the company, that is, as they have come into the ownership of this particular company 1046 today?

A. Yes.

Q. Was there any change or any additions, that is, any additional franchises granted to the company since January 1, 1908?

A. Not that I can recall.

Q. Well, you would know about it if there had been any new franchises?

A. I didn't have anything to do with the books from 1908 to the latter part of 1913, but I don't recall any change in franchises.

Q. Well, you are familiar with the reports as made to the State Tax Department?

A. Yes.

Q. And in those reports you have to indicate any additions to the capital account in the way of franchises?

A. Yes.

Q. Do you recall whether, in the reports, the 1919 report to the State Tax Department, there was any addition to the capital account in the way of franchises since January 1, 1908?

A. I don't recall any.

Q. I am not sure just what amount you stated was due to the Consolidated Gas Company or the New York & Queens Gas Company as of May 1st, 1920.

The Master. He didn't say the exact amount; he said between five and six hundred thousand dollars.

Mr. Tobin. I am anxious to know, if your Honor please, if he could give it to us a little more definitely.

The Master. Ask him.

1047 Q. Can you give us a little more definitely the figure that was due the Consolidated on May 1st, 1920?

A. Yes, I think I can get it from the ledger.

Q. Is the ledger here at hand?

Mr. Ransom. Your Honor knows that the defensive emergency service is eliminated from that Exhibit 90.

Q. Have you that amount?

A. \$540,000.

Q. And on January 1st it was what?

A. \$490,000.

Q. And are bills rendered quarterly for the interest on those various sums, sir?

A. No.

Q. How is that interest paid, I mean in what manner is it paid as far as the charge on the books of the company is concerned?

A. We figure up the interest and the accounting department of the Consolidated Company figures the interest; we check with them, then make out a voucher and send them a check for it.

Q. How often is that done?

A. Quarterly.

Q. That is, on the 1st of April, on the 1st of July?

A. No, the 1st of May.

Q. And the 1st of February?

A. Yes.

Q. And so on throughout the rest of the year, quarterly?

A. Yes.

Q. Can you tell just to what purpose the \$50,000 was spent that you received from the Consolidated Gas Company between

1048 January 1 and May 1 of this year, that is, not in detail necessarily?

A. To pay the interest on our bonds and some current bills.

Q. Were those current bills due the Consolidated Gas Company and its sub-companies?

A. Oh, no.

Q. Or were they outside corporations?

A. Outside companies.

Q. You placed on the record this morning an exhibit as to the alleged increase in labor in the shop?

A. Yes.

Q. That is, 1920 over 1919. Can you tell us how you took care of the item Sundays and how you took care of the item of overtime so far as making up your figures for 1920?

A. I took the total hours that the men worked for the first full week in May and divided into dollars paid them; that gave me the average, the rate per hour. There is no Sunday work in the shop and there may have been a little overtime, but not very much.

Q. Well, with the experience that the company had in 1919, was there not considerable overtime and Sunday work, I mean more than the average?

A. Not in the shop, except during the very cold weather, when we thawed out services.

Q. And that would happen any year except where you would have an unusual winter and then you would have more than the previous year?

A. Yes.

Q. In other words, that was entirely worked out on the average as far as the overtime and Sunday work, that is, you didn't 1049 go into the detail of the exact Sunday work and the exact overtime work as far as 1920 is concerned?

A. No; as I say, in 1920, there is no Sunday work and very little overtime.

Q. You are familiar with the requirements of the uniform system of accounts, Mr. Spear, are you?

A. Yes.

Q. Are you familiar with the item which calls for general amortization, gas, known as G-842 as contained in the uniform system of accounts?

Mr. Ransom: Objected to as incompetent and purely a question of law as to what the Commission may have intended it to mean.

Mr. Cummings: He is asking if he is familiar with it.

The Master: I will let him state on the record as to whether he keeps that account--do you know that account, general amortization?

The Witness: Yes, sir.

Q. How differently does your company keep the same item on its books today, that is, the item of general amortization?

A. We charge three cents a thousand to renewals and replacements.

Q. And is that all you charge off in that way?

A. Yes, it is.

Q. Under what instructions or under what order is that charged off in that way as concerns your company?

A. The action of the Board of Directors.

Q. Is that action in accordance with the resolution that was introduced in evidence this morning by Mr. Ransom?

A. Well, I am not sure—

1050 Mr. Ransom: I didn't introduce any resolution in evidence this morning.

Mr. Neumann: Who introduced it?

The Master: You.

Mr. Neumann: Oh, yes—you produced it, that is right—part of the Public Service Commission's reports.

Mr. Ransom: I think the resolution which was put in this morning related only to the Contingency Account; the resolution relating to the Renewals and Replacements was a resolution of November 16, 1915, which I have.

The Master: The paper you now have, Mr. Tobin, is not the one introduced this morning.

The Witness: I think the stenographer might have that.

Mr. Tobin: What I want to have Mr. Spear tell us about is not only that particular resolution which, as I recall—

The Master: Was 1916.

Mr. Tobin: Required 5 cents for every thousand cubic feet of gas made or sold be charged—

The Master: Be set up to a contingent fund.

Mr. Tobin: To a contingency fund, but I wanted Mr. Spear, if he might explain—

The Master: What is the date of this resolution?

Mr. Tobin: 1915.

The Master: Now, as I understand it, there was a resolution in 1915 fixing a replacement fund of 3 cents.

The Witness: Yes.

1051 The Master: And that there was a resolution in 1916 fixing a contingency fund of 5 cents.

The Witness: Yes.

Mr. Ransom: But the resolution of 1916 also contained a slight modification of the 1915 resolution with respect to the contingency.

The Witness: That was my impression, that there is something in the resolution about it.

Mr. Tobin: I wanted to see if I could get it straightened out; that was my reason for asking it.

The Master: Do you want to spread that on the record?

Mr. Tobin: I think we will offer this in evidence.

The Master: All right, give it to the stenographer and he will spread it on the record at this point.

The resolution referred to is as follows:

(No. 1.)

"Copy of Resolution Passed by the Board of Directors of the New York & Queens Gas Company at Their Meeting on Tuesday, November 16th, 1915.

"On motion, duly seconded, it was

"Resolved: That the title of the account heretofore designated as Accrued Amortization, be from and after December 13, 1914, designated as Contingency, and that, for each month thereafter, there shall be credited thereto and charged to Operating Expenses an amount equal to five (5c) cents per thousand cubic feet of gas sold during said month, for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrection or riot, or any other hazards; no charge against the said Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

"Resolved, That, in providing hereafter for the expenditures, required from time to time for renewals and replacements of property of this Company, retired from service (due to normal causes, obsolescence, inadequacy or changes, made in conformity with discoveries or improvements in methods of generating or distributing gas) the officers of this Company be and they hereby are authorized and directed to charge each month after January 1, 1915, as a part of the operating expense of this Company, under the designation of Renewals and Replacements, a sum, equal to three (3c) cents per thousand cubic feet of gas sold during said month, the same to be credited to Renewals and Replacements account: no charges against the latter account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

The Master: Now there was this resolution just spread on the record, under what date, Mr. Spear?

The Witness: November 16, 1915.

The Master: Then following that, did you set up the three cents?

The Witness: Yes.

The Master: For replacements?

1053 The Witness: Yes.

The Master: Then in 1916 there was a resolution—

Mr. Tobin: If I may interrupt you, this not only covers three cents, but it also covers five cents.

The Master: Yes, two things are covered by this resolution of November 16th—Amortization fund of five cents and Replacement fund of three cents.

The Witness: Contingency fund, isn't it?

The Master: Well, it says, "The title of the account heretofore designated as accrued amortization be changed and called contingency," and you set up five cents there, and then an additional three cents for replacements.

The Witness: Yes.

The Master: Is that set up on your books?

The Witness: It was.

The Master: Now, following the year 1916 there was a modification of this resolution.

The Witness: Yes.

The Master: As appears by the resolution spread on the record this morning?

The Witness: Yes.

Mr. Ransom: Then in 1918 and 1919 there were three further resolutions.

The Master: Wait a minute, the witness is testifying. Following the 1916 resolution, did you continue with your five cent contingency and three cent replacement?

The Witness: We did until, I think it was, through the year 1917, and in 1918 or 1919 the Board of Directors passed resolutions not to write that in for those two years.

1054 The Master: Not to write what in?

The Witness: The contingency.

The Master: But you continued writing in the renewals and replacements.

The Witness: Yes.

The Master: So during 1917 you charged off, you set up the five cents for contingency and three cents for replacements.

The Witness: That is right.

The Master: And in 1918 and since then you have set up three cents for replacements, but nothing for contingency.

The Witness: That is right.

The Master: And there are some resolutions with reference to that?

The Witness: Yes.

Mr. Ransom: Those are the three.

The Master: Show them to Mr. Tobin and see if he wants to offer them.

Mr. Tobin: Do I understand, Mr. Ransom, that if we have these three additional resolutions, with the one that we put in this morning and the one that was handed in this afternoon, that we have the complete story as to amortization, and renewals and replacements?

Mr. Ransom: From 1915 down.

Mr. Tobin: I mean we have the complete story?

Mr. Ransom: From 1915 down, yes.

Mr. Tobin: Now, if your Honor please, I think it might be better to take them in order.

This is January 15, 1918.

The Master: Are you offering this?

Mr. Tobin: Yes.

1055 The Master: The January 15, 1918, resolution will be spread on the record.

The resolution referred to is as follows:

"On motion, duly seconded, it was

"Resolved, That the resolution adopted October 17th, 1916, be and the same is hereby so modified that, for the year 1917 and there-

after until further action by the Board, there shall be credited as of December 31st of each year to Contingency account and charged to Profit and Loss account an amount, equal to five (5¢) cents per thousand cubic feet of gas sold during the preceding twelve months for the purpose of providing for contingencies or casualties, such as those caused by fire, flood, earthquake, insurrections or riot or any other hazards; no charges against the Contingency account nor any appropriations therefrom to be made, except by authority of the Board of Directors."

Mr. Tobin: And here is January 21, 1919:

The resolution referred to is as follows:

"On motion, duly seconded, it was

"Resolved, That action on the part of the Officers under the resolution of this Committee, adopted January 15th, 1918, providing for a credit to Contingency account and a charge to Profit and Loss account, be and the same is hereby suspended for the period of the calendar year 1918."

Mr. Tobin: And December 16, 1919:

The resolution referred to is as follows:

"On motion, duly made and seconded, it was

1056 "Resolved, That action on the part of the Officers under the resolution of the Board of Directors adopted January 15, 1918, providing for a credit to Contingency Account and a charge to Profit and Loss Account be, and the same is hereby, suspended for the period of the calendar year 1919."

Q. You followed the respective resolutions, as far as the book accounts were made up in accordance with these resolutions?

A. We did.

Q. And the book accounts will show these various amounts either set aside or not set aside as the resolutions read?

A. Yes.

Q. You said you were familiar with the requirement of the Public Service Commission as to the account of general amortization; can you tell us the reason why you failed to follow the Public Service Commission requirement and that the company set up its own method for taking care of items of this kind?

Mr. Ransom: Objected to as incompetent and improper in form.

The Master: Let me see the Public Service Commission's report.

Mr. Ransom: The company did not fail to comply with any lawful requirement of the uniform system of accounts, as this court has held in the Consolidated Gas Company case.

Mr. Neumann: What has that got to do with this company?

Mr. Ransom: The same system exactly, the same resolutions.

The Master: Read the question.

(Question read by the stenographer.)

1057 Mr. Ransom: That is objected to on the ground it calls purely for a question of law from this witness and it assumes that the company did not follow the lawful requirements of the commission, which it did.

The Master: Well I will let that question remain unanswered for the moment.

Do you know whether or not, Mr. Spear, the methods pursued by your company were or were not in compliance with the requirements of the Public Service Commission as you understand them.

Mr. Tobin: Well, if your Honor please, I think the record of the Public Service Commission will be the best proof as to whether they have complied with the requirements or not.

The Master: Then I think that answers your question. Objection sustained.

Mr. Ransom: The company says it did comply and this Court so held in the Consolidated case.

The Master: If you think it differs in any way from what the Public Service Commission required—

Mr. Tobin: I am asking him to explain, which he can very well do; he said he is familiar with these accounts, with the general amortization account and the accrued amortization account, and I am asking him to explain the difference. I think that is a fair question, whether he complied with the requirements of the Public Service Commission or not.

The Master: I just asked him whether he complied with it and you said the record ought to be the best evidence and now 1058 you are asking him to explain.

Mr. Tobin: To explain the difference, if your Honor please.

The Master: Well, is there any difference?

Mr. Tobin: I am asking him to explain the difference.

The Master: Let us find the difference first, what is the difference, what do you say is the difference between what you did and what the Public Service Commission required?

Mr. Tobin: These various changes that you find throughout the resolutions of the Board of Directors is with one purpose in mind, and that is to indicate, at least to have the books indicate that there is no depreciation in the property whatever.

The Master: That doesn't necessarily follow. You say the Public Service Commission required them to set up an amortization account, don't you?

Mr. Tobin: Yes, sir.

The Master: You say they have not done it?

Mr. Tobin: Yes, sir.

The Master: Then I don't care why they didn't do it or what the reason for it is. Your argument is just as forceful that it was done for one purpose as it was for another.

Q. Under the system as called for by the resolutions of the Board of Directors, you set up nothing for depreciation in your book accounts?

Mr. Ransom: Objected to as incompetent.

The Master: I will let him answer that.

A. No, we set up an account renewals and replacements to take care of that.

1059 Q. I asked, do you set up anything under the title of depreciation?

A. Under the title of depreciation, no.

Q. In other words, the situation of it is you have in that particular account only covered what might be termed extraordinary casualties?

Mr. Ransom: Objected to as quite contrary to the fact.

The Master: I will sustain the objection. I think your record is perfectly clear, that since the beginning of 1918 this company, this plaintiff company carries no account in which it sets up anything that might cover what might be said to be depreciation other than the renewal and replacement account. Is that so, Mr. Spear?

The Witness: That is right.

The Master: Now, what more do you want?

Q. Mr. Spear, you are familiar with the properties of the company as of January 1st, 1908, as to their physical condition?

Mr. Ransom: Objected to as immaterial, not within the scope of the present issues.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I was at that time, yes.

Q. You were in immediate charge of the mains and services and the distribution system at that time?

A. Yes.

Q. What would you say the condition of the mains and services was on January 1st, 1908?

Mr. Ransom: Objected to as immaterial, not within the scope of the present issues.

1060 The Master: I will allow it.

Mr. Ransom: Exception.

A. I do not recall at this time.

Q. Well, tell us—

A. (Interrupting.) That is twelve years ago.

Q. Yes, I understand that.

The Master: What do you mean by that, were they in good repair or bad repair, or obsolete or what?

Mr. Tobin: Whether they were in good repair or bad repair, or just what condition they were in.

The Master: As to repair?

Mr. Tobin: Yes. Well, condition not only as to repair, but also the condition of the mains themselves as they found them from time to time, in the operations of the company at that date.

The Master: I don't quite know what you are driving at, unless

you mean what their condition was as to condition of repair. You do not expect the witness to say they were falling apart, do you?

Mr. Ransom: Or that he took them up and looked at them.

Mr. Tobin: You don't need to inject that in here, Mr. Ransom. What I am trying to bring up is this, that Mr. Spear was in charge of the mains and services at that time.

The Master: Yes.

Mr. Tobin: And there has been an entire change of position on the part of this company as to the condition of this property, as to the condition of this property that was in the ground and was in use at that time. In other words they have attempted to prove 1061 that the property is quite 100 per cent. of efficiency, including this old stuff that was in the ground, and I am trying to ascertain what condition the property was in at that time, which was just prior to the—

The Master: The fixed capital account being set up?

Mr. Tobin: Just prior to the fixed capital account set up by the Public Service Commission.

The Master: What you want to know is what the condition of repair was of those mains and services when this fixed capital account was set up; whether they were rotten and falling apart, or whether they were in good efficient operating condition. How about that, Mr. Spear?

The Witness: The plant has always been in good operating condition.

The Master: I expected you would say that. What else could Mr. Tobin expect? Does that refer to mains, what you have just said?

The Witness: Yes; we have taken up mains that were laid by the original company way back in 1856, I think, and they are in splendid condition.

The Master: What else could you expect from a witness of the gas company? Did you expect him to say they were rotten and falling apart?

Mr. Ransom: You would not expect the witness to lie, would you?

The Master: Well, not necessarily that, but in the light of what 1062 has gone on here, it would be the most surprising thing in the world for me to hear from a witness of the gas company that this plant or any part of it was falling apart ten or twelve years ago.

Mr. Ransom: You would expect any witness to testify the mains were in excellent condition, irrespective of age.

The Master: Yes, I think that is so.

Mr. Ransom: That is what Little testified to.

Mr. Tobin: Well, I am here to get information, if your Honor please.

The Master: I am not here to get information, but I want facts, and I have given you the opportunity to attack any statement made by Mr. Spear, not to go fishing for some other purpose.

Mr. Tobin: What I have particular reference to is that the fixed capital account as of December 31st, 1908, showed that there were mains set up to the extent of \$172,993.89.

The Master: Yes.

Mr. Tobin: I am trying to ascertain as to what condition those mains were in at that time, at that date, or on December 31, 1908.

Mr. Ransom: Well, may the record show that Mr. Tobin is reading from what purports to be a tax report produced by the Attorney General?

The Master: Yes, I so understand.

Q. Now, what was the condition of mains at that time?

A. Good.

Q. You came with the company at what time, Mr. Spear?

1063 The Master: Originally?

The Witness: In 1902.

Mr. Ransom: With the predecessor company?

Q. Now, this merger came into existence, this Newton & Flushing Company was merged into the New York & Queens Company in 1904?

The Master: August 1st, 1904.

The Witness: Right.

Q. Do you recall the number of miles of mains that the company had at that time?

A. No, I do not.

Q. Would you recognize the signature of Mr. Thomas as an officer of this company, appended to the report to the State Tax Department of June 30th, 1904?

A. Would I recognize the signature, you say?

Q. Yes.

A. Yes.

Q. Is that Mr. Thomas' signature (indicating)?

A. Yes, it is.

Q. Do you know whether this is a report of the company to the State Tax Department as of June 30th, 1904?

Mr. Ransom: Objected to as immaterial, not within the scope of the issue in this case.

The Master: I will assume that it is, from its appearance.

The Master: If the Attorney General states it is produced by him, I will admit that it is.

Mr. Tobin: What?

Mr. Ransom: If the Attorney General states that it is produced by him from the files of his office, or the office of the State Tax Department, I will admit it is the report.

1064 Mr. Tobin: Yes.

Mr. Cummings: Yes.

The Master: All right, having had two yes's, what is the next question?

Mr. Tobin: We ask that that be marked for identification.

The Master: You don't have to mark it for identification; it is identified.

Mr. Tobin: I will offer it in evidence.

The Master: For what purpose?

Mr. Tobin: Why, we want to show the condition of the property, that is particularly the mains and services, as of that particular date, as that particular date as indicated by the company itself.

The Master: Do you say that it contains any admission against interest of the complainant?

Mr. Tobin: I say it indicates the value of their mains and services as of that particular date.

The Master: Is that against their interest?

Mr. Tobin: I don't know.

The Master: Well, unless you are prepared to say it is an admission against interest, I am not going to take a useless paper. It has got to be for some purpose. What is the purpose of it?

Mr. Tobin: Yes.

The Master: Yes? Yes what. What is it offered for?

Mr. Tobin: It is against interest.

The Master: It is an admission against interest?

Mr. Tobin: Yes.

The Master: All right, then, I will take it.

1065 Mr. Ransom: One moment. May I see it?

Mr. Tobin: Yes (handing paper).

Mr. Ransom: I object to this on the ground that it is incompetent, irrelevant, immaterial, it is not in any way binding upon the complainant company, it is a report not of the New York & Queens Gas Company, but a report of the Newtown & Flushing Gas Company, verified by the vice-president of the Newtown & Flushing Gas Company, it is made under the tax laws as they existed at that time, under which the basis of valuation prescribed for tax purposes under the decisions as they then stood in the courts of intermediate appeal was a very different basis than was later adopted by the courts of last resort and followed in later reports of gas and other public service corporations; that so far as the question of condition of property as of August, 1904, a report of the Newtown & Flushing Company verified by one of its officers under the tax laws as they stood at that time, could have no bearing; and the report on its face contains nothing which indicates the conditions, all that it attempts to do is to assign certain values to property of the Newtown & Flushing Company at that time.

Mr. Tobin: This report is made by the New York & Queens Gas Company.

Mr. Ransom: It surely was not.

Mr. Tobin: Well, read the title of it.

Mr. Ransom: It is verified by the Newtown & Flushing Gas Company.

Mr. Tobin: Read the title of it.

1066 Mr. Ransom: Schedule A shows the title of the company and the names of the officers and directors, and this covers a period down to June 30, 1904; no portion of the period covered by

this report was within the corporate existence of the New York & Queens Gas Company.

Mr. Neumann: But the New York & Queens took over the Newtown & Flushing in the year 1904.

Mr. Ransom: But the report was for a period which ended before—

Mr. Neumann: Well, it took over all of its property and it had to make a report.

Mr. Tobin: If you will look at the date of acknowledgement, you will see, Mr. Ransom, that it was made when only the New York & Queens Gas Company existed, and not the Newtown & Flushing Gas Company.

Mr. Ransom: It was made for a period ended June 30, 1904, and was made by the Newtown & Flushing and verified by its officers.

Mr. Cummings: May I submit, the declaration of the predecessor company would be binding upon the succeeding company end of it.

Mr. Neumann: Here is the situation: This company took over the Newtown company in that year and made a report, and some one had to make a report, either the Newtown & Flushing or the New York & Queens.

Mr. Ransom: And the Newtown & Flushing did.

Mr. Neumann: The Newtown & Flushing undertook to make a report—the Newtown & Flushing was out of existence when 1067 that report was made and had to be made.

Mr. Ransom: But the vice-president of the Newtown & Flushing did make the report.

Mr. Neumann: And one of the officers of the New York & Queens.

Mr. Ransom: No; it affirmatively appears the report—

Mr. Cummings: Since you are the successor, it is binding upon you.

Mr. Ransom: Not in the slightest.

Mr. Tobin: And you cannot take the good of a company and leave the bad.

Mr. Ransom: This one had no bad.

Mr. Neumann: Well, why object to it, then?

Mr. Cummings: That is true of every declaration against interest.

Mr. Ransom: It has no possible bearing, or anything in it.

Mr. Cummings: It is made in accordance with the statute.

The Master: I will take this for what it is worth as an admission against interest. The Newtown & Flushing Gas Company, as I understand it, was merged with the New York & Queens Gas Company on or about the 1st of August, 1904. The date I find on this paper is July 18, 1904. In November of that year a report was filed as of the year ending June 30, 1904, for the Newtown & Flushing Gas Company.

Mr. Ransom: And verified—

The Master: That company having been merged with the New York & Queens Gas Company, the New York & Queens Gas 1068 Company undertook to make that report.

Mr. Ransom: Does that show it was an officer of the New York & Queens that made that report?

The Master: Yes, but he was likewise an officer or connected with or authorized by, and must have been, with this company which had succeeded to the Newtown and Flushing, and the report as filed, bearing the stamp December 30, 1904, of the State Board of Tax Commissioners, is, the stamp is, "Newtown and Flushing Gas Company"—Report of the Newtown and Flushing Gas Company by New York & Queens Gas Company into which the Newtown and Flushing Company was merged July 18, 1904."

Mr. Ransom: Will your Honor state by whom is it verified?

The Master: Yes, verified by Charles Thomas, vice-president of the Newtown and Flushing Gas Company; and the affidavit of tangible property was verified by Mr. Thomas as vice-president of the Newtown and Flushing, but the latter—it will appear from this paper that it was filed by the New York & Queens for the Newtown and Flushing. I will allow it.

Paper marked Defendants' Exhibit L.

Mr. Ransom: I take it that the Attorney General will furnish us with copies of this.

Mr. Tobin: Yes, we will be glad to do that.

Mr. Ransom: Within two or three days.

Mr. Tobin: If we have these blanks, I don't know whether it is possible to get them or not.

1069 Mr. Ransom: Have it copied.

Mr. Tobin: There is no doubt but what the company has a copy of it.

Mr. Ransom: There is a very great doubt.

Q. Do you recall the separation that was made of the capital expenditure on December 31, 1908? I do not mean the detail of it, but do you recall that there was such a separation made on December 31, 1908, in order to comply with the requirements of the Public Service Commission?

A. Well, I do not recall that because I had nothing to do with the books at that time.

Q. You had nothing to do with the books in 1908?

A. No.

Q. Who had charge of the books at that time?

A. I do not recall just who it was.

Q. Well, what office did you have with the company at that time?

A. Manager.

Q. Well, to whom was the bookkeeper responsible at that time?

A. I think Mr. H. L. Snyder had charge of the books at that time; he was President and Treasurer.

The Master: He was what?

The Witness: President and Treasurer.

Q. Would he as such officer of the company direct how the separation should be made as to these capital expenditures as required by the Public Service Commission—these capital accounts?

A. Why, I don't know positively, but I think so.

Q. Well, who passes on the proper alignment of separation of the capital expenditures, so far as going into the books today? That is, the separation between capital and operation, who is the person that does that?

A. I do.

Q. How long have you had charge of that separation, so far as the books of the company are concerned?

A. The latter part of 1913.

Q. Can you tell us anything about the capital account as made up December 31, 1908, in the way of separation of items?

A. No.

Q. You don't know under whose direction that was carried forth or ordered?

A. No, I do not, except that I would say that Mr. Snyder probably had charge of that.

Q. Back in 1913 you did have charge of the books, and you had the say as to the separation to be made between capital charges and operating expenses?

A. Yes.

Q. At that time what method did you follow as to amortization and accrued amortization?

Mr. Ransom: Objected to as immaterial, not within any issue of the case.

The Master: I will allow it.

Mr. Ransom: Exception. If you are going to try the entire history of this and predecessor companies, we will take a long time.

A. I do not recall just what rule we did use.

Q. I am asking that question for this reason. Mr. Spear: I have brought in here on the record a resolution of the board of directors as of 1915, which had to do with such items as I referred to, and I would like to have you tell us just how you cared for capital expenditures in operation, that is, the separation of money, pr 1071 to the date of that first resolution. Did you follow the classification and requirements of the Public Service Commission?

A. I do not quite get you on the difference between capital expenditures and operation.

Q. Where it is to be charged?

Mr. Ransom: Objected to as immaterial, what they did in 1908; it has no bearing on the issues.

Mr. Tobin: 1913.

The Master: We have moved up a bit, it is 1913 here.

Mr. Ransom: Well, 1913 has no bearing with respect to the requirements of the uniform system of accounts.

The Master: I do not think Mr. Tobin has asked the question that he says he has asked. Beginning 1915, you set up a five per cent contingency?

The Witness: Five cents.

The Master: And three cents replacement?

The Witness: Yes.

The Master: Prior to that time how did you take care of those items?

The Witness: That is what I am thinking of. I cannot recall just what we did there, whether it was just prior to that or not, but at one time we did set up a certain amount per thousand, less repairs, I think twelve cents a thousand less repairs. I do not recall just at what time that was done.

Q. And that was the rule at the time you came in to take charge of the books, in 1913; that was the rule you followed?

The Master: What rule?

1072 Mr. Tobin: The rule of twelve cents less renewals and repairs.

Mr. Ransom: Objected to as not cross examination of this witness. The witness has not undertaken to testify definitely to that, and it is not within the scope of any matter on which he was examined in chief.

The Master: Overruled.

Mr. Ransom: And should not have been gone into at this time.

The Master: I understood the witness to say he did not recall whether it was just prior—

Mr. Tobin: He did state that his recollection was that they charged twelve cents less repairs.

The Master: At one time.

Mr. Tobin: Yes, prior to 1915.

The Master: Some time prior.

The Witness: I do not recall whether it was just shortly prior thereto.

Q. Can you recall whether it was the rule when you took charge of the books in 1917?

A. No, I cannot recall.

Mr. Ransom: The defendants have the annual reports of the company here for the various years.

Mr. Neumann: Do you want to use them? They are right here.

Mr. Ransom: And annexed to those reports are shown the various resolutions.

Mr. Neumann: They are right here, if you want to use them.

Mr. Ransom: If they want to use the reports, let them use them.

The Master: Next question, Mr. Tobin.

1073 Q. Referring to this exhibit, which is Defendants' Exhibit

I, the supplemental sheet which is attached to that, a supplemental report as it termed, known as Form A-1, 1904, Gas, it would indicate that the company had at that time 223,197 feet of mains—

Mr. Ransom: Cast-iron mains.

Mr. Tobin: Yes, cast-iron mains. That would be all cast-iron mains, yes.

Q. (Continuing:) And that the statement of the present value reproduced new was \$60,047, and the present value, allowing for depreciation, was \$24,829.

Mr. Ransom: What is the question?

Q. Would this indicate to you that those mains and services were not in good repair?

Mr. Ransom: Objected to as incompetent.

The Master: Let him answer it. Go on, Mr. Spear.

A. I do not know what they made those figures up from.

By the Master:

Q. Does it indicate to you that they were in good repair or in bad repair?

A. I do not think they have ever been in bad repair.

Q. Then it does not indicate anything to you?

A. No.

By Mr. Tobin:

Q. These figures do not indicate anything to you, then, as to the condition of the property?

The Master: As to the condition of repair of the property.

A. No, I do not know what they base the figures on.

1074 Mr. Ransom: They indicate somebody blundered on the law for a while.

Mr. Tobin: That is all. Mr. Neumann: I suppose there is no use asking that that statement of the witness Ransom be stricken from the record, about a blunder of the law. Mr. Ransom should not be permitted to make any such statements in the record.

The Master: What difference does it make?

Mr. Neumann: It makes all the difference in the world.

The Master: To whom?

Mr. Neumann: It creates an atmosphere, that is all, that is not fair.

The Master: Where?

Mr. Neumann: In the record.

Mr. Ransom: Is Mr. Tobin finished?

Mr. Tobin: No, I just have several more questions.

The Master: I thought he was finished.

Mr. Neumann: Yes, so did I.

Q. Will you be good enough to clear us up on what the company intends to include or does include in the term known as renewals and repairs, as set forth—

The Master: Renewals and replacements.

Q. (Continued.) Renewals and replacements, as set forth in the books of the company?

By the Master:

Q. How is that account handled? What do you charge to it and what do you debit it with? I mean what do you credit it with and what do you debit it with?

A. We charge to it 3 cents a thousand for the gas made, and then credit—we credit it with 3 cents a thousand, and then charge 1075 it with the replacements made during the year.

Q. What do you mean by that, replacements?

A. For instance, we might replace an engine, take an engine out.

Q. What do you do, withdraw that from capital?

A. Yes.

Q. And put the new engine to capital account?

A. Yes.

Q. And if there is a difference there you charge it against this replacement account?

A. Yes.

Q. If there is a loss there?

A. Yes.

Q. Is that the idea?

A. Yes.

By Mr. Tobin:

Q. Then if you have a replacement, an entirely new replacement, we will say in the year 1918, you charge that against capital for that particular year?

A. I do not quite get you.

Q. We will say you replace an engine, just as the question of the Master indicated; you credit fixed capital with that particular amount?

A. We take the one engine out of fixed capital and charge the new one in, into fixed capital.

Q. How do you do that?

A. I think I was a little wrong in a statement I made, saying yes to the Master in answer to his question. Anything that we write off during the year would come out of that Renewals and Replacements.

The Master: Do you mean to say that the Renewals and Replacements is not the loss on the replacements but the entire property retired?

Mr. Tobin: That is what he said.

The Witness: Anything that is retired during the year is charged against that replacement account. For example, there might be some stoves in our rental stove account, and if they are condemned they are charged against that Renewal and Replacement. Condemned Meters, and an old holder that we had; I think it was in 1919 we charged out part of it.

Q. In what year, Mr. Spear?

A. 1919.

The Master: Those things are not replaced?

The Witness: No.

Q. The only thing that you take out would be junk value; isn't that the idea?

A. No.

Q. Well, you do not even take that off.

A. If we can find the exact original cost we deduct it at the original cost; if not we estimate it.

Q. As to the contingency fund, can you tell us about the debits and credits of that? There is a debit and credit in that account?

The Master: They do not carry that any more.

Mr. Ransom: There has not been any since 1917.

Mr. Tobin: They always carried the account, if your Honor please.

The Master: Not since 1917.

The Witness: We carried the account, but there is not anything charged to it.

1077 Mr. Tobin: They have been carrying it, but there is nothing charged to it, that is the only thing. The account exists in their books today; the only thing is they have been directed not to charge anything to it. He has already explained to us the debits and credits of that particular account.

The Master: That are not charged or credited to it?

Mr. Tobin: Well, it happens that they are directed not to charge, but still it exists. They may change about tomorrow.

Mr. Ransom: They would have to get some profit and loss account to do it out of.

Mr. Neumann: I move to strike that from the record. That is not fair.

The Master: I would like to get this clear off the record.

(Discussion not reported.)

Q. How do you take care of wear and tear and obsolescence, as far as the accounts of the company are concerned?

Mr. Ransom: Objected to as vague and indefinite.

Mr. Tobin: That is, those accruing. It is not vague.

Mr. Ransom: Why, of course.

Mr. Tobin: That item is accruing all the time, and I am asking the witness how they take care of it. It is something that is occurring all the time.

Mr. Ransom: You have mixed up wear and tear with inadequacy.

Mr. Tobin: We will ask it in pieces—how does he take care of wear and tear?

Mr. Ransom: Of what?

1078 Mr. Tobin: Of the property.

Mr. Ransom: Of the land?

Mr. Tobin: You know well it is not land. Do not inject yourself in here; I am asking the question. We will take any piece of property that you care to take, such as an engine, a boiler or anything else of that sort. I am asking how the accounts are charged to wear and tear.

Mr. Ransom: Take a generator set, which has wearing parts.

Mr. Tobin: The witness testified, I think, that one of their tanks—

The Master: How do you take care of the obsolescence on a piece of machinery?

Mr. Tobin: That is, I mean the accruing amount, if your Honor please.

The Witness: We have not had any for a great many years.

Q. I mean how do you take care of it?

Mr. Ransom: I object to the question. He is asking a question based on some theory of somebody that there is an accruing obsolescence. What in the name of law or theory—

The Master: I am going to dispose of it on this ground: The witness has made it perfectly clear that there is not any account that they carry, since 1917, of whatever name or of whatever kind, that will comprehend or cover in it obsolescence, depreciation or any other thing except this three cents renewal and replacement.

Mr. Tobin: That is not entirely true, if your Honor please. The account exists in some way, but they have not charged anything to it. That is, they have not used it. That does not mean that it does not exist.

Mr. Ransom: Is it the claim of the Attorney-General that the contingency account is to provide for accruing obsolescence, whatever that may mean?

The Master: Do I understand, Mr. Tobin, that you contend they have two accounts—renewals and replacements and this contingency account?

Mr. Tobin: Yes, sir.

The Master: And that in the contingency account there have been no credits or debits since 1918?

Mr. Ransom: Since 1917.

The Master: Since 1917; is that correct?

Mr. Tobin: Yes, that is what I understand from the witness.

The Master: Is there any other account on your books, of any kind, Mr. Spear, that would cover obsolescence or depreciation or amortization, or whatever else you want to call it?

Mr. Neumann: Since 1917?

The Master: Since 1917, except this account that is on the books under the head of contingency and this renewals and replacement?

The Witness: No, there is not.

The Master: Nothing else?

The Witness: Nothing else.

Q. Take the holder that you retired in 1919, had you set aside anything to take care of the replacement of that particular piece of property?

A. Renewal and replacement account—it is charged against it.

1080 Q. Renewal and replacement account?

A. Yes.

Q. Is there anything else in the account besides renewals and replacements?

A. Yes, everything retired during the year is charged against that account.

Q. Do you recall how much was placed in that account in the year 1919, Mr. Spear, the renewal and replacement account?

The Master: \$10,086 and odd.

Q. \$10,086, and what was the replacement?

A. I think it was pretty nearly the same thing, if I recall the figures.

Mr. Ransom: Only a matter of a few cents one way or the other.

The Master: I have looked into that from the exhibits. You do not need to bother with that from this witness. \$10,087 was the actual amount of one and \$10,088 was the other.

Mr. Ransom: There were a few cents between the actual amount and the amount set aside.

Mr. Tobin: I am showing the amount set aside to take care of the big plant and property they have.

Mr. Ransom: How much does the Attorney General contend should be set aside?

Mr. Tobin: Well, we will tell you that later.

Cross-examination.

By Mr. Van Steenburgh:

Q. Mr. Spear, in the exhibit that was submitted to you this morning, put in evidence, you make use of this item Work on Consumers' Premises \$14,284.22?

1081 A. Yes, sir.

Q. Have you vouchers covering that item?

A. And payrolls.

Q. Giving in detail how that is made up?

A. That is mostly all payrolls; some vouchers.

Q. What does that work consist of, Work on Consumers' Premises, \$14,284.22; does that cover a period of one year ending May 25, 1920?

A. Yes, that is one year.

The Master: That is an estimate, Mr. Van Steenburgh; that is his estimate of what it will be this year.

Mr. Ransom: With present cost of labor and materials.

Q. Why, Mr. Spear, was that put in payroll in part and part in vouchers, that item of \$14,284.22?

A. Why was it put in?

Q. Yes, why was it separated in that way?

A. I do not think it is separated.

Q. Part of it appears in vouchers and part of it is a matter of payroll charges?

A. Part of it is material and part for labor, but mostly labor.
Q. But, I say, how much is for labor?

The Master: For last year that total item was \$11,996.66, and he estimates that this year it is going to be over \$14,000.

Mr. Van Steenburgh: From that time up to May 25th?

The Master: Yes; it is a mere estimate.

Mr. Van Steenburgh: I wanted to get some idea, because it did not seem to be quite clear as to what that represented.

By the Master:

Q. Have you got the details of 1919?
1082 A. No, but it represents an increase of 20 per cent in the labor, because it is shop labor, and the increase in our pay, average pay, is 20 per cent over the average price in 1919, and 10 per cent for materials.

Q. What Mr. Van Steenburgh is trying to bring out is, what percentage of the total represents labor and what percentage of it represents material work on consumers' premises?

A. It was about \$13,000 in labor and \$1,200 in materials.

Q. What was it last year, do you know?

Mr. Neumann: Are you reading that from a memorandum, Mr. Spear?

The Witness: Yes.

A. Last year it was \$10,800 in labor and \$1,100 in material.

By Mr. Van Steenburgh:

Q. When you use the words "Work on Consumers' Premises," do you mean installation of service mains?

A. No, no. That service mains would be under the head of Services, New Construction.

Q. Then what does this work consist of; what is the kind and character of this work? You might just briefly answer that.

A. The setting of appliances, attending to complaints—work of that character.

Q. And that has nothing whatsoever to do with the installation of services, mains or extensions, or anything of that kind?

A. Oh, no.

Q. You have also estimated for the year ending May 25, 1920, repairs to street mains, \$7,121.28?

A. Yes.

1083 Q. What did you make the actual cost of making the repairs to street mains for last year?

The Master: That is in the exhibit.

A. I think that is in Mr. Teele's exhibit.

Mr. Van Steenburgh: Is it in the exhibit?

The Master: Yes.

Mr. Van Steenburgh: I thought that he would state that and then compare it with this, and show the increase, if any.

The Master: Last year it was \$5,697.

Mr. Van Steenburgh: Last year, I found in the exhibit, it was \$5,697.

The Witness: And this is \$6,121.

Q. And the difference is due to the increased cost of labor?

A. It is.

Q. And materials as well?

A. Yes.

The Master: Of course, Mr. Van Steenburgh—I do not recall whether I made the statement while you were in the room or not—I am taking this estimate of 1920 merely as an estimate, and I do not intend to base any finding on that; except that, assuming the evidence is not contradicted, assuming the record when it closes bears that out, that it would appear this year it was going to cost a good deal more than last year. But following the practice I undertook in the Consolidated case, I am going to base my finding on 1919.

Mr. Van Steenburgh: I assumed you would.

Q. I think one item, Mr. Spear, needs some explanation, because it seems to be uncertain in my mind whether you intended 1084 to charge up the entire item of \$25,000 to gas rate appeal; is that fair?

The Master: He intends to, yes.

Q. Is that a fair estimate, I mean—a fair disposition of that item? A. I think it is very conservative.

Q. But I am speaking about you making that chart; it is made in one year's operation, isn't that so?

A. Yes.

The Master: The Master is not going to allow it, so you need not concern yourself with that. I mean I am not going to allow it in one year anyway.

Mr. Van Steenburgh: In the matter of legal expense you make the same ruling, too?

The Master: I do not know, that legal expense may have been an expense incurred in other directions and properly applicable to the year. You might ask him about that and find out what that is.

Q. Mr. Spear, will you examine the item "Legal Expense," which you estimate for the year to May 25th, \$5,497.19. What was that, actually for the year 1919?

A. I think I added \$2,500 as the legal expense for this year.

The Master: Last year it was \$2,997.

The Witness: I only added \$2,500 to that item.

Mr. Ransom: I am able to testify that is very conservative.

The Master: This \$2,900, Mr. Spear, for last year, was for legal services other than and entirely different from any rate making appeal legal services?

1085 The Witness: Oh, yes.

The Master: It was for the usual legal service?

Mr. Chambers: I object now. What was it? Why should he draw the conclusion? What legal service was it? You are asking him was it outside the rate appeal. What was it? Why let him draw the conclusion?

The Master: Mr. Chambers, I cannot very well find out what it was unless I find out whether it was included in the rate appeal.

Mr. Chambers: Let us see what it was. I did not want him to draw the conclusion.

Mr. Ransom: Three counsel for the Attorney General have so far participated in the last five minutes.

The Master: Tell Mr. Van Steenburgh the character of the legal service included in the last year's charge.

The Witness: General consultation with our attorneys over all matters, drawing contracts—anything we wanted to consult them about.

Q. Under a general retainer? Was it under a general retainer?
A. Yes, the general retainer is included here.

Q. And what was the name of the counsel?

A. Shearman & Sterling.

Q. They are also counsel for the Consolidated Gas Company?

A. They are.

Q. And it was under the general retainer, as you understand it?

A. Yes.

Q. Mr. Spear, you have been a gas expert or a manufacturer of gas for a considerable period of time?

1086 A. I have.

Q. It is suggested that I inquire as to the item pro rated for legal expense. Is that pro rated, I mean among the different companies, or chargeable and charged to and exclusively to the New York & Queens, this complainant?

A. No, it is charged direct to us.

Q. To this company?

A. Yes, the New York & Queens Gas Company.

Q. None of it is charged or pro rated, then, among the other companies?

A. No.

Q. And you have been engaged in the gas business for a considerable length of time?

A. For about twenty-four years.

Q. You are familiar with the state of the art at the present time as affecting the improvements in gas making devices?

A. Yes.

Q. Have you in use at your operating plant at Flushing the most economical and efficient method of manufacturing water gas?

A. We have.

Q. And that is known as the Lowe process?

A. It is.

Q. Is that at the present time the most efficient and the most economical method of manufacturing water gas?

A. It is.

The Master: In your opinion?

The Witness: Yes.

Q. And so considered by gas experts generally?

A. Yes.

Q. And you do not know of any improvements or changes that you might make in your plant which would tend to produce 1087 gas more economically to the consumer than you are using at the present time?

A. I do not.

Q. You have testified, have you not, in reference to the cost of what is known as the Douglaston Extension, Mr. Spear?

A. Yes, sir.

Q. You gave that figure at how many thousand dollars?

A. I think it was \$143,000.

Q. Is that charged up to operating expenses for the one year, the year 1919, or part of the year 1919 and part of the year 1920?

A. No, it is capitalized.

Mr. Ransom: No part of it is operating expense.

Q. There is no part of it operating expense?

A. No part of it an operating expense.

Mr. Van Steenburgh: I think Mr. Neumann wanted to inquire about that, as to the cost of that; so I will defer if you desire, Mr. Neumann.

Mr. Neumann: Are you through, Mr. Van Steenburgh?

Mr. Van Steenburgh: I am not, but I did not want to pursue that.

Mr. Neumann: Exhaust your own examination, never mind me.

Q. You were examined in the case of the people of the State of New York against the Public Service Commission as a witness for the New York & Queens Gas Company, which had to do with the Douglaston Extension?

A. I was.

1088 Q. Those hearings took place in the beginning or the middle of the year 1914, and ended in 1915, did they not?

A. I think those are the dates.

Q. The final order was given in March, 1915. And you testified as to what the cost of making that extension out there was, did you not?

A. I did.

Q. When I say out there, I mean to Douglaston.

A. Yes.

Q. Do you recall what you made that cost, the entire cost?

A. I do not recall now.

Q. Did you not make it \$66,000 odd?

A. My recollection is around \$80,000 at that time.

Q. You made it \$80,000?

A. Yes, but we did not make the installation exactly as we figured on at that time, and also we laid more mains than we figured at that time.

The Master: In addition to which the price went up?

The Witness: Oh, it went up terrifically in the meantime.

Mr. Chambers: Well, they were delaying it for that reason, they did not go forward with it.

The Master: What Mr. Van Steenburgh is trying to bring out is the fact that if you had done the work when you were ordered to, it would save the company a lot of money.

Mr. Van Steenburgh: That is the point.

Mr. Neumann: Do you want the figure, Mr. Van Steenburgh?

Mr. Van Steenburgh: Yes.

1089 Mr. Neumann: It is right here (handing counsel book). Ask him the specific question.

Q. Mr. Spear, did you not testify to a question put to you by Mr. Patterson of counsel for the Gas Company:

"Q. Have you estimated the cost of extending the mains so as to serve this territory, the trunk line main and the various other mains which would be required?"

A. Yes, sir."

Did you so testify?

A. Well, I presume I did if the record shows it.

Q.—

"Q. And what do you estimate as the total cost of that construction?"

A. \$66,731.69?"

A. Yes.

Q. You so testified?

The Master: Do you recall that?

Q. Do you recall that testimony?

A. Yes. I think it was that way; and then I think further on the question came in there, on the question of engineering and supervision and contingency, and—

The Master: Interest during construction?

The Witness: Yes, and the taxes during construction.

The Master: Which you think brought it up to \$80,000?

The Witness: That is my recollection of it.

Q. Your recollection is that you made the other items going to make it up, as you testified now, superintendence, construction and cost of financing the operation, and so forth—you claim it made up the difference between \$66,000 and the \$80,000?

1090 A. That is my recollection.

Q. The gas engineer for the Public Service Commission was examined in those hearings?

A. Yes.

Q. Do you recall what he estimated the entire cost of that operation to be?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial, and not a proper way of proving it.

The Master: I do not see very well how that is competent. Mr. Van Steenburgh.

Mr. Van Steenburgh: It is objected to, and you sustain the objection?

The Master: I sustain it.

Mr. Van Steenburgh: Exception.

The Master: I take it from the line of this inquiry you represented some public body over there?

Mr. Van Steenburgh: Yes, the Douglaston Association, of which I am president now.

The Master: You were pressing the situation so as to get this service out to Douglaston; is that the idea?

Mr. Van Steenburgh: We were; that is the idea.

The Master: It took you how long to get it?

Mr. Van Steenburgh: Five years.

The Master: What became of it; did it go up to the Court of Appeals?

Mr. Neumann: The Supreme Court of the United States.

Mr. Van Steenburgh: It did, and the first time we got the law settled as to the duties, rights and prerogatives of the Public Service Commission, as to whether they could make an order which would be obeyed or not.

The Master: You represented the people over in Queens in that proceeding against that company?

Mr. Van Steenburgh: Yes, sir; I did.

Mr. Chambers: They were using the courts as a hippodrome. Mr. Ransom says.

The Master: What is that?

Mr. Neumann: Mr. Ransom's affidavit says they were using the courts as a hippodrome.

The Master: I do not know what that means.

Mr. Neumann: It may be we will have him explain it some time during the course of this case.

Mr. Chambers: He was under oath there as assailing them bitterly for having litigated foolishly on that question.

The Master: Anything else?

Mr. Van Steenburgh: Yes, just one thing more.

Q. The item paid for Relief Department and Pensions, that is a variable quantity, is it not, Mr. Spear?

A. It is.

Q. And for the year 1919 it was how much, do you recall from the exhibit here, or have you got it?

A. \$581.15.

Mr. Ransom: The company having been compelled by law to make this extension, they are now entitled to a fair return.
1092 Q. You estimated this year \$697.38, and that is based upon no special figures, but just a general estimate, Mr. Spear?

A. It is based on the increase in pay for the men, as also the increase to the doctors.

Q. You are paying this year more to the doctors than you did in 1919?

A. Yes.

Q. What percentage of increase?

A. We paid them formerly a dollar for a visit at the office or a visit to the house. This year we pay them a dollar for a visit to the office and two dollars for a visit to the house.

By Mr. Neumann:

Q. Mr. Spear, when you were testifying about the general legal expenses every year, does that include anything with reference to advice given with reference to stocks and bonds, or dividends or the like?

A. I do not think that I can recall ever asking advice on any of those items; but it includes general advice.

Q. It includes general advice on all subjects appertaining to your business?

A. Yes.

Q. Whether it is with reference to stocks and bonds or tax reports or things of that kind?

A. That is right.

Q. Mr. Spear, you recall at the last hearing, May 18th, 1920, we were discussing the question of the daily works reports and how the entries got into the books, and in answer to one of my questions you stated that you took the quantities from the works reports, but not the amount. Is that correct: do you recall that?

1093 A. Yes, there were no dollars figured on the works reports.

Q. You did not want the impression to prevail that the amount is on those work sheets?

A. Oh, no.

Q. That is what I wanted to clear up; the reason you did not take the amount is that it is not contained on those sheets?

A. Well, the works superintendent has not the information to fill that in.

Q. Yes, but that is not contained on those sheets, the amount?

A. Oh, no, it is not.

Q. That is, the amount in dollars. The quantity is, but not the amount in dollars?

A. That is right.

By Mr. Van Steenburgh:

Q. Mr. Spear, there is a difference in the cost of distribution of a high pressure plant as compared or contrasted with a low pressure plant, is there not?

A. There is.

Q. You are operating on both, are you not, in Flushing?

A. Not in Flushing; at Bayside we have the low pressure. We are pumping in Flushing.

The Master: By "pumping" you mean the high pressure?

The Witness: Yes:

Q. That is, at Bayside the low pressure, and Broadway and the intermediate territory?

A. Yes, everything else is low pressure, except any consumers we might take up on that high pressure line between Flushing and Douglaston, where there was not a low pressure main to connect them with.

1094 Q. Is there an appreciable difference in the cost of the two methods of operation or distribution?

A. Well, the difference is in the cost of compressing the gas, and boiler coal.

Q. I say, is that an appreciable item?

A. Yes.

Q. Would it be in the course of a year?

A. Yes, it would be.

Q. How much would you estimate it to be?

A. I do not know; I have not any of the figures.

Q. Confining your answer to the present plant?

A. I haven't the figure in mind, now, on it.

The Master: I think the record shows it sufficiently; it requires several pounds more of coal.

By Mr. Neumann:

Q. I now show you a paper, Mr. Spear, that was produced by counsel for the complainant, and will ask you to state what that is.

The Master: Oh, don't waste time, it is the pay-roll—for what month?

The Witness: Shop Payroll for January, 1919.

Mr. Neumann: I offer this in evidence.

Mr. Ransom: No objection.

The Master: Mark it.

Marked Defendants' Exhibit J.

Mr. Neumann: I offer in evidence the statement for January, 1918.

The Master: What is it, a shop payroll?

Q. Is that correct?

A. That is right.

The Master: Mark it.

Marked Defendants' Exhibit K.

1095 Q. This morning when I was interrogating you with reference to Exhibit 58, you explained that the items under Mains

and Service Department were not contained in the Sales of the company, is that correct?

A. That is right.

Q. Well, now, just look at Defendants' Exhibit J, January 31, 1919.

The Master: What is the question?

Q. (Continuing:) You stated, did you not, that the reason these were not on the payrolls was because they were paid for by the contractor?

A. Yes.

Q. Now, let me direct your attention to the fact that in the first column you have the words "Sullivan Brothers," that is the contractor you had in mind, is it not?

A. Yes.

Q. Following along the first item of Foremen, 55 5/9 cents per hour—do you get the item I have in mind?

A. Yes.

Q. Does that payroll indicate that that foreman was paid or not?

A. No, he didn't receive anything that month.

Q. And still he is in your Exhibit No. 58, 1 foreman, 55 5/9 cents?

A. That is right.

Q. Now, the item one laborer, 36 1/9 cents, that I called your attention to this morning, and I now call your attention to Defendants' Exhibit J under the title Sullivan Brothers, one laborer, 36 1/9 cents; what does the exhibit show with reference to his pay for the month?

A. He didn't draw anything that month.

1096 Q. For the whole month?

A. That is right.

The Master: How does Sullivan Brothers get on those payrolls at all?

The Witness: At one time we used to put their time on the payroll, and my recollection is that that was until about May, April or May of 1919, and then since that time he has rendered bills for them instead of putting it on the payroll—that applies to the shop payroll, which would be for repairing mains and services, attending to leaks in streets and so on—not to construction or installation of mains and services.

Q. Now, I show you Defendants' Exhibit K, January 31, 1918, Sullivan Brothers in the first column, for one foreman at 50 cents; one foreman at 36 1/9 cents; horse and wagon 33 1/3; laborer 33 1/3 and laborer 30 5/9 cents; is that correct?

A. That is right.

Q. Those items that I have indicated to you, how much time during that month was spent by those various men according to this payroll?

A. One week.

Q. For the entire month?

A. Yes.

Q. Now, then, Mr. Spear, at page 885 of the record, folio 2654, you testified to the number of cubic feet of gas sold on the Douglaston Extension, which was January, 1920, February, 1920, and March, 1920, and April, 1920, is that correct?

A. That is right.

Q. When did you first begin to serve the Douglaston Extension?

A. In the latter part of November, 1919.

1097 Q. When was the construction of the Douglaston Extension commenced?

The Master: Oh, we have had that.

Mr. Neumann: No, it has not been testified to.

The Master: Early part of 1919.

The Witness: About July.

Q. About July, and completed—

The Master: In time to turn on the gas in November.

The Witness: It was not completed; it has only been completed this year. We had four consumers connected on Thanksgiving Day, as to which we are very proud.

Q. And does your testimony at folio 2653 contain the cost of building that extension taken from the books of the company?

A. Yes.

Q. That is \$145,735.71, is that correct?

A. Yes.

Mr. Neumann: With reference to the exhibit that Judge Ransom introduced in evidence this morning by this witness as to Distribution Expense, I will say I am not ready to cross examine this witness and I would like the privilege of suspending his cross — at this point for that purpose only, for that exhibit.

The Master: All right.

Mr. Ransom: I think they ought to advise us when they wish to recall him for further cross examination.

Mr. Neumann: I will do that.

Mr. Ransom: He probably won't be here during the remainder of the term.

Mr. Neumann: I'll be glad to do that.

Mr. Ransom: Mr. Teele, take the stand.

1098 ARTHUR W. TEELE recalled.

Mr. Ransom: Mr. Teele is now produced for cross examination.

Cross-examination.

By Mr. Tobin:

Q. Will you refer to the first page of Exhibit 65, Mr. Teele.

A. Which is 65, Mr. Tobin?

Q. As to the item of Sales of Gas, marked as Schedule 1, \$334,-

614.83. Will you tell us just how you arrived at that particular sum?

A. The particular sum of \$334,614.83 is the aggregate of the three sums, \$255,196.63 appearing on Ledger, folio 204; the sum of \$1,165.50, appearing on Ledger, folio 200; and the sum of \$78,252.70 appearing on Ledger, folio 202.

Q. Taking the item of Commercial Meter Lighting, which is shown on the second page, amounting to \$255,196.63, is that the amount of sales as charged on the books of the company?

A. That is the amount of sales as charged on the books of the company, less the deductions and allowances as shown in this schedule, of \$1,235.77 which amount is charged against the Ledger account shown on folio 204.

Q. Take those deductions and allowances; what deductions and allowances go to make up that item of \$1,235.77?

A. Various items that are shown in the Ledger account, the nature of which is allowances made on account of fast meters and overcharges in bills, and so forth, which were made in the settlement of the accounts.

1099 Q. Then you simply accepted those allowances and deductions as they appeared on the books of the company?

A. No, I traced them back to the original vouchers and records.

The Master: But you didn't exercise any judgment as to the allowance?

The Witness: I did not.

The Master: Your exhibits, as I understand it, are tabulations taken from the books?

The Witness: They are tabulations taken from the books.

The Master: Have you with respect to any item attempted to change the figures in the books?

The Witness: I do not now recall that I have changed any figures in the books. There is one case of interest on taxes charged to office expenses, where I have deducted it from the amount shown on the books, and it is so shown on this schedule, and added it to the other items of interest on taxes—that is not changing any of the figures as they appear in the books.

The Master: Mr. Tobin, in the Consolidated Gas case I took the position that I was not going to permit a long line of what I called fishing questions of Mr. Teele. These exhibits were given to you and to other counsel quite some time ago. I had supposed that in the meanwhile—and I suspended Mr. Teele's cross examination

for that purpose—that you and your engineers would familiarize yourselves with the exhibits to the point of being able to bring out, sharply, in a very few questions from Mr. Teele, any false basis on which he worked, or any error made by him, or any particular point you wanted to bring out.

Mr. Tobin: But his own testimony is the best as to that, if your Honor please, as to just how far, for example, as to these particular allowances and deductions, he went back to satisfy himself.

In other words, he said here he simply accepted the amount as it

appeared on the books and he didn't go any further, and he afterwards stated that the only change he made, as I recall the testimony, was concerning an item of interest on taxes.

The Master: What Mr. Teele said was that he looked back at the entries supporting those Journal credits or those allowances that were made. He simply proved here a tabulation that he says is a correct tabulation from the books; instead of my analyzing these books and checking off from the books and making the computation, he has brought to me a tabulation. Now any cross examination which would indicate that he has not done that or that he has omitted any items or added items that do not appear in the books, I will let you bring out, but I will not allow any fishing expedition.

Mr. Tobin: Well, I don't intend to do that, your Honor.

1101 Q. Did you examine the reports that the company had made from time to time to the Public Service Commission, more particularly the report as made to the Public Service Commission for the year 1919?

A. I have not seen any report made by the company to the Public Service Commission.

Q. Taking the item in Schedule 3, Operating Expense, Ledger No. 2, folio 215, you have an item of "Rate Case," G-876, \$15,518.73. Was that particular item taken off the books of the company?

A. That amount appears on Ledger, folio 215, of the Operating Expense, Ledger No. 2.

Q. Did you look at the voucher number?

A. I did.

Q. Will you tell us as to the make-up of that voucher.

A. I can, if you will allow me to refer to my analysis of the account—shall I read the items making up the total?

The Master: Yes.

The Witness: The total, \$15,518.73 is made up of the following items:

\$14,397.81, for an invoice in favor of the Bartlett-Hayward Company;

\$75.80 for an invoice in favor of the Bartlett-Hayward Company;

\$300.0 for an invoice in favor of the Douglas Robinson, Charles S. Brown Company;

\$90.00 for an invoice in favor of the Bartlett-Hayward Company;

1102 \$250.00 for an invoice in favor of the Brown-Wheelock Company;

\$61.28 for an invoice in favor of the Bartlett-Hayward Company; Payroll items amounting to \$56.10.

Q. Those payroll items are for moneys paid to employees of the company?

A. They are moneys paid to Miss Louise Mold and Edna Allen, both employees of the company.

Q. What does it indicate as to any overtime?

A. The information given to me was that it was for overtime put

in by these employees in reporting vouchers, and so forth, used by the Bartlett-Hayward people in making their analysis as to the class of property and so forth.

The Master And charged by the company against the rate case?

The Witness As part of the cost in the rate case.

Q. Is there anything in the voucher to indicate that it is overtime?

A. I do not now recall—it only amounts to \$56.10.

Q. Does that make up the total?

A. No, there is one further item of \$287.74, which is also labor employed in connection with the work of the Bartlett-Hayward Company, sounding foundations, &c.

Q. Take that big item.

A. And is cleared out of their suspense account, originally charged to the suspense account from payroll, and the total amount is \$287.74.

Q. Take that big item of the Bartlett-Hayward Company, does the voucher indicate what the service was for which this large amount was paid?

1103 A. Yes. The notation which I have made from the voucher indicates that it was for services rendered to September 10, 1919, in connection with the valuation of the New York & Queens Gas Company plant.

The Master Wait a minute. Mr. Tobin, I let you ask this line of questions as illustrative of what I do not want done.

You have had your men on these books, they have had access to these vouchers, they should know perfectly well what these items represent.

It does not at all bear on this witness' testimony, that his tabulation is a correct tabulation from the books.

Mr. Tobin The reason I am asking these particular questions, if your Honor please, is that it is my information that this item of rate case set forth here at 215, is merged on the books under General and Miscellaneous Expense, and I asked for a separation of it, that was all an explanation of the separation.

The Master Well, bring that out—is that so, Mr. Teele?

The Witness No. It appears on folio 215 of the Operating Expenses Ledger No. 2. The General and Miscellaneous Expenses are on other folios.

Q. Well, of course I do not want to dispute you, Mr. Teele; the way I have the information is that it is carried as Miscellaneous General Expense and here it appears to be separated into 1104 these items, that is the reason I asked the question.

The Master Well, Mr. Teele's statement is that that is the way he found it on the books. The books are here and if your information is that he is not correct, get the book and confront him with it, that is the way to handle the cross examination as to that.

Mr. Tobin All I want to do is to clear it up and Mr. Teele can take the book and clear it up.

The Master. The way to clear it up is to get the book, get the General Expense Ledger and see if you haven't got it in there.

Q. Is it carried any other place?

Mr. Vilas. Let the record show that the witness looks at page 215 of Operating Expense Ledger No. 2.

The Witness. Operating Expense Ledger No. 2, folio 215, the account is headed "Rate Case, 27-A."

Mr. Tobin. And I have Miscellaneous and General Expense.

The Master. Look at it and see if it is duplicated, look at the page and make sure.

The Witness. It is not—I think perhaps Mr. Tobin is misled in regard to it, because all of these items are charged to one account, which is a control account of this ledger, on the General Ledger.

The Master. What is that?

The Witness. Operating expenses, that is the control account of this ledger, and this is a segregation of the items that are charged in that one account.

The Master. The same items do appear in what other folio?

The Witness. The total of items charged in here go to the control account, of course, each month.

The Master. What folio are you looking at, Mr. Teele?

The Witness. I am looking at folio 208.

The Master. What is that?

The Witness. General and Miscellaneous Expense.

The Master. Is that the control account?

The Witness. No, the control account is not in this ledger; this is the operating expense ledger.

The Master. Well, now, this rate case item of fifteen odd thousand, does that appear at folio 208?

The Witness. It does not, it appears at folio 215.

Q. There is still another ledger in which these amounts are contained, merged under what item?

A. All operating expenses are charged to the account operating expenses on the General Ledger, which is the control account for this Operating Expense Ledger, in which the items charged in that one account are segregated under the various captions set forth in this ledger, and they are set forth in this ledger.

Q. Taking the book before you and taking the items that you first referred to, \$15,518.75, did you accept that as a proper charge in operating expenses?

Mr. Vilas. Objected to.

The Master. Objection sustained. I don't care whether he did or not, he is simply testifying to a tabulation as to what the book shows. It is not for him to say whether it is proper or improper.

Q. Take the item of bad debts, 298, in Schedule 3; was that the exact amount as set forth in the book account?

The Master. Have you looked at the book—is it, Mr. Tobin?

Mr. Tobin. I am asking him, if your Honor please.

The Master: I am asking you; that is what you had this exhibit for, for weeks and weeks.

The Witness: General Ledger, folio 298.

The Master: What is the amount?

The Witness: \$156.25.

Mr. Vilas: Folio 298 of the General Ledger is produced and the witness points to the entry to which he is referred.

The Master: You are referring to an item at folio 298, No. 6, are you, Mr. Tobin?

Mr. Tobin: I am referring to this particular exhibit.

The Master: Well, you are referring to the item in the General Ledger at folio 298, \$156.25; is that what you are reading?

Mr. Tobin: Yes, sir.

The Master: And you want to know whether it appears in the books?

1107 Mr. Tobin: Yes, sir.

The Master: If you had looked at Exhibit No. 52 before you asked that question you would have found it on page 298.

Mr. Tobin: I don't find that particular item, under that particular item as I have got it here.

The Master: What do you mean you don't find that particular item?

Mr. Tobin: I don't find just that particular item.

The Master: That particular item I find as the total during the year 1919, and he has written that off at folio 298.

Mr. Vilas: I would suggest that the Attorney General look at the books in evidence instead of some report.

Mr. Tobin: I don't need any suggestion at all.

Q. Referring to the first page of the Schedules 1, 2, 3 and 4 in this particular exhibit, taking the item of \$25,340.89 Net Loss in Gas Business. I do not find that particular item on the books.

The Master: Is that a question, or a statement?

Mr. Tobin: I am asking Mr. Teele if that is a calculation he made himself, or how he arrived at that particular sum.

The Master: Well, that is your computation, is it?

The Witness: It is; it is the deduction between the expenses shown on this sheet, and the revenues as shown on this sheet.

1108 Q. And the expenses shown on this sheet, that is the deduction that you made yourself, sir?

A. It is.

By the Master:

Q. The expenses on this sheet are the deductions you made yourself?

A. Expenses and revenues.

Q. Well, those expenses that you have got on that sheet are expenses that appear on the books?

A. They are.

Q. The total is the total that you figured it at?

A. This figure is the deduction which I made of the expenses from the revenues.

Q. But the question was inaccurate. As I understand it, you have here a series of figures showing revenues?

A. Yes.

Q. That is taken from the books?

A. Yes.

Q. The total revenues applicable to the gas business does not appear in the books in this form?

A. No.

Q. That is your computation?

A. Yes.

Q. Then you have various expense items?

A. Yes.

Q. These are all taken from the books?

A. Yes.

Q. The total expenses are your computation?

A. Yes.

Q. From which you have deducted total revenues?

A. Yes.

1109 Q. And the net loss is your computation again?

A. Yes.

The Master: All right, next question.

By Mr. Tobin:

Q. As to the items going to make up Schedule 2, Mr. Teele, Cost of Production, did you go back to the daily work reports to check up as to whether they were accurate or not, sir?

Mr. Vilas: Objected to as already covered.

The Master: I will allow it.

Mr. Vilas: Exception.

A. I don't know what you mean by the check.

Q. Take the item of Labor, in checking up the item that appeared on the books of \$7,089.28, did you check back to the daily work report as to how that amount was made up as appears on the books of \$7,089.28?

A. I checked back from the Ledger to the Journal to find that it was a distribution of the payrolls; and then I tested four months of the payrolls.

Q. Take the Gas Oil, \$107,192.16, how far did you trace back as to whether it was correct or not?

A. I went back to the original invoices and the original inventories of the inventory at the beginning of the year.

Q. Did you check it as against the daily work reports as to the amount of gas oil used in the manufacture of gas?

A. We tabulated the reports on the daily work reports, showing the consumption during the year, and compared that with my computation of inventories plus oil purchased less inventory on hand at the end to find out whether they were in agreement or not.

Q. Did you find any errors at all in that daily work report as to the amount of gas oil on hand?

A. The total aggregate of the quantity reported by the daily work reports agrees with the quantities of oil on hand at the beginning of the year plus the oil purchased during the year, less the oil on hand at the end of the year.

Q. In other words, you simply took the summaries as they appeared on the books, and did not go into an examination to ascertain for yourself whether that gas oil was actually used or not?

Mr. Vilas: That is objected to; contrary to the fact, not a fair statement.

The Master: I will allow it.

Mr. Vilas: Exception.

A. I summarized the quantities as shown on the work reports in order to compare the total of it with the computation as I just testified.

Q. In other words, you do not pretend to say that this exhibit here of revenues and expenses, that you personally checked as to the actual consumption of gas oil, or the actual consumption of coal in the making of the gas?

A. I do not know that I understand your question as to whether I personally checked the consumption.

Q. Do you know of your own personal knowledge as to whether the gas oil charged and the coal charged in these calculations which appear on the books were actually consumed by the company in the manufacture of gas?

1111 Mr. Vilas: That is objected to, already gone into fully.

The Master: Overruled.

Mr. Vilas: Exception.

A. From the records of the company which I examined, they appeared to be the actual amounts consumed.

Q. How do you know that?

A. They are reported by the works manufacturer as having been consumed. The works manufacturer reports that he had on hand a certain quantity of oil at the beginning of the year, the vouchers duly approved and endorsed as showing the quantities of oil received during the year were submitted to me and examined by me, and starting with the admitted quantities of oil on hand at the beginning of the year and adding thereto the amount of oil acknowledged by the responsible authority as having been received during the year, less the quantity of oil which that same authority admits as having on hand at the end of the year, I arrived at a quantity of oil which is to be accounted for, and that quantity of oil is the quantity of oil reported by the manufacturing department as having been used during the year, and I therefore have taken it for granted, or I have taken that quantity of oil as being the quantity of oil that has been used.

Q. You did not go any further than that to verify that quantity of oil already stated?

Mr. Vilas: Objected to, already covered.

The Master: Overruled.

Mr. Vilas: Exception.

A. I did not go beyond that point, no. I do not know how I could.

1112 Q. Take the item of labor, you accept the payrolls as the basis of checking, or you used the payrolls of certain months to check the items as those payrolls went into the Journal and subsequently into the Ledger account?

A. I used certain months of the year, that is, January, June, July and December of 1919 as test months to satisfy myself as to the accuracy of the distribution of the payrolls and as to the amount of the payrolls, those payrolls being endorsed by the works superintendent, he being the responsible authority for the engagement and payment of labor.

Q. You accepted the pay roll as the evidence of the work performed?

A. I did, with the exception of the four months which I tested, and those four months I went back to the record immediately behind the pay roll, which is the monthly distribution sheet of the individual workmen. That record is made, however, by the same man who endorses the pay roll and is responsible for it.

Q. What I am asking particularly is, you did not know of your own knowledge as to whether the work had been performed or not?

A. I was not present and did not see the work performed by any of the laborers.

Q. Well, then, we are to accept your statement that you took the book figures as they appear, and from those book figures you have made up these schedules which are known as Exhibits 64 and 65?

Mr. Vilas: Objected to as not a proper statement of what the witness has testified to.

1113 The Master: Overruled.

Mr. Vilas: Exception.

A. I do not think that I made a statement that I took the book figures as they appeared.

Q. Well, what changes did you make in the books?

A. I have not changed any of the figures as they appeared.

Mr. Tobin: That is all.

Mr. Vilas: Is the Attorney General through with the cross-examination?

Mr. Tobin: I think Mr. Neumann has got something yet.

Cross-examination.

By Mr. Neumann:

Q. I call your attention, Mr. Teele, to Exhibit 55, and especially Schedule 2 under "Cost of Production," and I direct your attention

to the word "deduct." Underneath there you have under the items residuals produced, "credit residuals produced sold," is that correct?

A. It is.

Q. Now, the first item of residuals produced credit \$15,960.36 will be found in the total amount of \$257,151.15, it is in under the last single item that goes to make up that total, is that correct?

A. There is such a figure there.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Disallowed.

Mr. Neumann: Exception.

Q. Does the figures \$257,151.15 mean that it is the total of the entire column of schedule 2?

1114 Q. I does. Not the entire column, it is the total of the items under which it appears. There is another item in the column.

Q. Which item?

A. This item.

Q. I am not talking about that, I am talking—

The Master: It is the total of the items above it?

The Witness: Yes.

Q. That is what I mean. And there is included in that item \$15,960.36?

A. There is such an item in that total.

Q. Now, the second item residuals produced \$13.95, is that amount anywhere included by you in the total figure \$257,151.15?

A. It is not. —

Q. Why not?

A. Well, because it is not and should not be.

Q. Upon what theory?

A. Why, because the \$13.95 represents the proceeds of the sales of residuals. These residuals which were sold do not enter into any part of the production, whereas the other item of \$15,960.36 represents not only the residuals produced, but that portion of the residuals produced which is used in production.

Q. And that is not true of the item of \$13.95?

A. No, that is not true of the item of \$13.95 which is sold.

Q. Now then, take the figure \$15,960.36 which is immediately above the total of the column "boiler fuel tar used," who fixed the price as to that, do you know?

1115 A. That is the price which appears on the company's books, I cannot say. I had nothing to do with the fixing of it.

Q. And the same way of that item residuals sold, you had nothing to do with that?

A. No.

Q. You took that from the books?

A. That is what the company realized.

Q. Now, referring again to Exhibit 65, Schedule 4, you have not shown upon that schedule the pages that these various items were taken from regarding taxes?

A. No.

Q. Are they contained in more than one ledger account, or are they usually in separate accounts under the titles that you have here stated?

A. They are contained in the ledger account of accrued taxes.

Q. All these items?

A. Accrued taxes and interest on accrued taxes.

The Master: General ledger account?

Q. General ledger account?

A. Yes. No, let me see. Just a minute until I refer to that. The item of \$1,749.10 is in the account of accrued taxes. The item of \$7,382.54 is in the accrued taxes.

Q. Is that a computation of two figures?

A. It is the various amounts which are set up monthly to equal the amount of the taxes accrued during the year.

The Master: How much?

The Witness: \$7,382.54, which is the amount of the franchise tax.

Q. Where is that?

1116 A. They set up these monthly amounts (indicating) in January. That is the balance of the unpaid taxes brought forward at the beginning of the year.

Mr. Vilas: Referring to general ledger folio 176.

Q. And that amount \$2,868.81 is a balance brought forward from the year 1918, is that correct?

A. That is right; and then they sent up an estimated amount each month to cover the taxes accrued during the year, and at December 31st they make an adjustment entry, which adjustment entry is in amount necessary to make the total credited in this account during the year equal the total amount of the taxes assessed against the company during the year.

The Master: Where does the \$7,000 item show?

Q. \$7,382.54?

A. The \$7,362.54 is the sum of the items paid during the year, and charged to the debit side of this account.

The Master: Which two items?

The Witness: May 25, 1919, on cash book 80, check No. 3541, Receiver of Taxes, New York City, \$3,691.27.

The Master: Where is that in the ledger?

The Witness: The \$3,691.27 is included in that figure.

Q. That is November?

A. Yes.

Q. That isn't May?

A. The other was May, and is in here, it is in this May 31st
1117 Accounts Payable, \$10,305.13, which includes the first half and this includes the second half. There is the second half of the real estate tax and the second half of the franchise tax, \$3,691.27, making the figure, and the second half of the real estate tax is in that and the first half of the franchise tax.

Mr. Vilas: May the record show the witness indicates on folio 176 of the General Ledger.

The Witness: In other words, the taxes paid during the year applicable to the year 1919 are charged in this side of the account.

The Master: Meaning in the left hand column?

The Witness: Meaning in the left hand column.

Q. What do you mean applicable?

A. I mean the taxes which are assessed against the company by the various taxing authorities for the year 1919.

Q. Irrespective of whether they are paid or not?

A. Irrespective of whether they are—no; mounts which are paid are in here.

The Master: They set up an arbitrary account every month to cover it in.

Mr. Neumann: Yes.

The Master: What is this last column here.

Q. What is the last column on page 176?

A. That is a balance column. They simply keep a continuous balance in the account. Here is the analysis of the account right here (indicating). The balance at the beginning of the year 1118 of \$2,868.81 is made up of three things, it is made up of the unpaid Federal income tax of 1917, \$332.54; the unpaid Federal income tax of 1918, \$867.46; and the unpaid gross earnings tax of 1918 of \$1,668.81, a total of \$2,868.81. Now, there have been credited during the year as accruing during the year 1919 an aggregate of \$23,533.25, made up of these items: Gross earnings tax for 1919, \$1,749.10; real estate tax of \$13,103.16; real estate of corporations tax \$28.20; special franchise tax of \$7,382.54; capital stock tax of \$827 and Federal income tax on bond interest coupons of \$443.25, which are not included in here as being a part of the gas business.

Q. You mentioned something about capital stock tax in Exhibit 65?

Q. There is an additional item here of \$471, being the additional capital stock tax assessed in 1919, based upon the 1918 figures.

Adjourned to Thursday, May 27, 1920, at 9:30 A. M.

Last Complainant's Exhibit 90.

Last Defendant's Exhibit L.

